Dec 15 1871
Motion March 21 1872
Thursday
Mr Mahon
Judge Clifford

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~540.~~ 140

THE STEAMER PATAPSCO, HER TACKLE, ETC., JAMES A. BORLAND, CLAIMANT, APPELLANT,

vs.

JAMES BOYCE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Deny motion

FILED DECEMBER 6, 1870.

2 How 73
Dec 16 1871
motion dismissed
Thursday
March 30 1872

SUPREME COURT OF THE UNITED STATES.

No. 340.

THE STEAMER PATAPSCO, HER TACKLE, ETC., JAMES A. BOLAND, CLAIMANT, APPELLANT,

vs.

JAMES BOYCE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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a UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York in the second circuit, do hereby certify that the foregoing pages, numbered from one to 215, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of James Boyce, libellant & appellant against The Ship Patapsco, her tackle, &c., and James A. Borland, cl'm't & appellee, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 30 day of Nov., in the year of our Lord, one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-ct. int. rev. stamp affixed and canceled.]

1 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-seven—present, the Honorable William D. Shipman, district judge.

JAMES BOYCE
vs.
THE STEAMER PATAPSCO, HER TACKLE, &C. } 19—502.

APRIL 20TH, 1866.

The libellant files his libel against The Steamer Patapsco, her tackle, &c., in the words and figures following, to wit:

2 (Indorsed:) Vol. , No. . United States district court for the southern district of New York. Order. Proctor for . Filed the day of , 186 .

3 In admiralty. United States district court, southern district of New York, of April term, A. D. 1866.

To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York.

The libel and complaint of James Boyce, a resident of Baltimore, in the State of Maryland, against The Steamboat or vessel called the Patapsco, in a cause of contract civil and maritime, and the said libellant do allege and articulate as follows:

Firstly. That he files this libel in the said southern district, and the said vessel is at present within this district, to wit, at the port of New York.

Secondly. That, in or about the month of February and March, A. D 1866, the said vessel being at the port of Baltimore, in the district *district* of Maryland, and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court, your libellant, at the request of the agent of the Commercial Steamboat Company, the charterers and owners of said vessel who were a foreign

corporation in said port, furnished the said vessel with certain supplies and materials, consisting of coal, the particulars whereof are set forth in the schedule hereunto annexed, marked A, and the value of said supplies and materials and coal is $1,715 60.

Thirdly. That the aforesaid sum of $1,715 60 still remains due and unpaid, with interest thereon from the 24th day of March, 1866, amounting in all to the sum of $1,724 60 now due your libellant, and that the payment thereof, although requested from the owner of said vessel, has not been made to your libellant.

Fourthly. That the said supplies and materials so furnished as aforesaid, were necessary and proper, and the said vessel could not have proceeded on her voyage without such supplies and materials, and that the same and the said supplies and materials were furnished on the credit of the said vessel *as well*. That the said vessel had no credit or means of credit within said port of Baltimore to procure the said supplies, which were necessary for her navigation, save by reference to the bottom of said vessel, and the same were so furnished to her solely on the credit of her bottom.

4 Fifthly. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore your libellant pray that process in due form of law, according to the course and practice of courts of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture, wheresoever the same shall be found, and that all persons having or pretending to have any right, title, or interest, may be cited to appear and answer all and singular the matters hereinbefore set forth, and that this honorable court would be pleased to announce for the damages aforesaid, and for such other relief in the premises as shall to law and justice appertain, and also to condemn the said vessel, her tackle, apparel, and furniture, and all persons intervening, in costs.

JAMES BOYCE.

D. & T. McMAHON,
Proctors for Libellant.
D. McMAHON, *Advocate.*

Sworn to before me, this 20th day of April, A. D. 1866.

GEO. F. BETTS,
U. S. Commissioner.

[U. S. internal revenue stamp, 50-c., cancelled.]

5 Schedule "A," referred to in the foregoing libel and forming part thereof.

Commercial Steamboat Company's steamer Patapsco to James Boyce, DR.

1866.				
Feb'y 3	40 tons bituminous coal	7 10		284 00
10	41 " " "	7 10		291 10
17	50 " " "	7 10		355 00
26	50 " " "	7 00		350 00
March 14	25 " " "	6 50		162 50
24	42 " " "	6 50		273 00
				1,715 60
	Interest			8 90
				1,724 50

6 (Indorsed:) 19—502. In admiralty. U. S. district court, S. D. of New York. James Boyce vs. The Steamboat or vessel called the "Patapsco," &c. Libel. D. & T. McMahon, proctors libellant, 13 Chambers st., N. Y. Filed April 20th, 1866.

7 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas, a libel hath been filed in the district court of the United States for the southern district of New York, on the twentieth day of April, in the year of our Lord one thousand eight hundred and sixty-six, by James Boyce against The Steamboat or vessel called the Patapsco, her engine, &c., materials $1,724 50, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded, to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 8th day of May next at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the Honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this twentieth day of April, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninetieth.

GEO. F. BETTS, *Clerk.*

D. & T. MCMAHON,
Proctors for Libellant.

(Indorsed:) Vol. 19, page 502. Southern district of New York. United States district court. James Boyce vs. The Steamboat or vessel called the Patapsco, her engine, &c. Monition ret'ble May 8th, 1866. D. & T. McMahon, proctors for libellant, 13 Chambers st. Filed May 8th, 1866.

I hereby depute Lawrence Bates to execute the within process. Dated April 20th, 1866.

R. MURRAY,
U. S. Marshal.

8 In obedience to the within monition, I attached The Steamboat Patapsco, her tackle, &c., therein described, on the 20th day of April, and have given due notice to all persons claiming the same, that this court will, on the 8th day of May inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) pro-

ceed to the trial and condemnation thereof, should no claim be interposed for the same.

R. MURRAY,
U. S. Marshal.

Dated May 8th, 1866. E. 1874.

9 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday the eighth day of May, in the year of our Lord one thousand eight hundred and sixty-six—

Present, the Honorable Samuel R. Betts, district judge.

U. S. district court.

THE STEAMBOAT PATAPSCO, &C., *asm.* JAMES BOYCE.

And now, James A. Borland, sole owner of the steamer "Patapsco," intervening for the interest of himself in the said , appears before the honorable court and makes claim to the said , &c., as the same are attached by the marshal, under process of this court, at the instance of James Boyce, and the said James A. Borland avers that he was in possession of the said steamer at the time of the attachment thereof, and that the person above named is the true and bona fide owner of the said steamer Patapsco, and that no other person is the owner thereof; wherefore, he prays to defend accordingly.

Sworn to and subscribed this eighth day of May, A. D. 1866, before me.

GEO. F. BETTS,
U. S. Commissioner.

A. J. HEATH,
Proctor for Claimant.

10 (Indorsed:) Vol. 19, No. 502. United States district court for the southern district of New York. The Steamboat "Patapsco" asm. James Boyce. A. J. Heath, proctor for claimant. Claim of owner. Filed the eighth day of May, 1866.

11 Respondent's costs.]

Stipulation entered into pursuant to the rules and practice of this court.—Filed the eighth day of May, 1866.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court, on the 20th day of April, in the year of our Lord one thousand eight hundred and sixty-six, by James Boyce against The Steamboat Patapsco, &c., for the reasons and causes in the said libel mentioned, and praying that said st'boat may be condemned and sold to pay the demands of the libellant, and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimant or his sureties execution for the sum of two hundred dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim has been filed in said cause by James A. Borland :

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred & fifty dollars, conditioned that the cl'm't above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or, upon an appeal, by the appellate court.

J. A. BORLAND.
B. H. J. TRASK, J'R.
J. BORLAND.

Taken and acknowledged this 8th day of May, 1866, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss :*

Benjamin J. H. Trask, j'r, and James Borland, parties to the above stipulation, being duly sworn, doth depose and say that he, Trask, resides in the southern, and he, Borland, in the eastern, district of New York, & that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

B. J. H. TRASK, J'R.
J. BORLAND.

Sworn to this 8th day of May, 1866, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the 8th day of May, 1866.

GEO. F. BETTS, *Clerk.*

12

13 *Bond to Marshal.—Act of Congress, March 3, 1847.—Filed the 8th day of May, 1866.*

District court of the United States of America for the southern district of New York.

Know all men by these presents that we, James A. Borland, Benj'n J. H. Trask, j'r, & James Borland are held and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of thirty-four hundred & fifty dollars, to be paid to the said Robert Murray; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the eighth day of May, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas, a libel has been filed in the district court of the United States for the southern district of New York, on the 20th day of April, in the year of our Lord one thousand eight hundred and sixty-six, by James Boyce, libellant, against The St'boat Patapsco, &c., for the sum of seventeen hundred & twenty-four $\frac{50}{}$ dollars, on which process of attachment has issued, and the said steamboat is in custody of the marshall under the said attachment, and James A. Borland, has applied for a discharge of said steamboat from the custody of the marshal, and has filed a claim claiming the said st'boat as owner, and

has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court: Now, therefore, the condition of this obligation is such, that if the above-bounden James A. Borland, Benj'n, J. H. Trask, j'r, and James Borland shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. A. BORLAND. [L. S.]
B. J. H. TRASK, J'R. [L. S.]
J. BORLAND. [L. S.]

Sealed and delivered, and taken and acknowledged, this 8th day of May, 1866, before me.

GEO. F. BETTS,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

James Borland & Benj'n J. H. Trask, j'r, being duly sworn, each deposes and says that he, Trask, resides in the city of New York, & he, Borland, resides in the city of Brooklyn, & that he is worth the sum of sixty-nine hundred dollars, over and above all his just debts and liabilities.

B. J. H. TRASK, J'R.
J. BORLAND.

Sworn to this eighth day of May, A. D. 1866, before me.

GEO. F. BETTS,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond. Dated this 8th day of May, 1866.

SAM'L R. BETTS.

Recorded the 8th day of May, 1866.
Approved:

D. & T. McMAHON,
Proctors for Lib't.

14

15 At a stated term of the district court of the United States of America for the southern district of New York, held at the U. S. court-rooms, in the city of New York, on Tuesday, the eighth day of May, in the year of our Lord one thousand eight hundred and sixty-six—
Present, the Honorable Samuel R. Betts, district judge.

THE STEAMBOAT PATAPSCO, &C.,
asm.
JAMES BOYCE.

On filing claim and stipulation for claimant's costs, together with a bond under the act of Congress in double the amount claimed, approved by the district judge. On motion of A. J. Heath, proctor for the claimant, it is ordered that the appearance of the claimant be, and the same is hereby, entered, and that a copy of this order be delivered to the marshal.

16 (Indorsed:) Vol. 19, No. 502. United States district court for the southern district of New York. The Steamboat Patapsco, &c., asm. James Boyce. A. J. Heath, proctor for claimants. Order to marshal. Filed the eighth day of May, 1866.

17 To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The answer and claim of James A. Borland, of the city of New York, merchant, to the libel filed by James Boyce against The Steamboat or vessel called the Patapsco, alleges as follows:

First. Your respondent alleges that, at the time of filing the libel in this suit, he was the sole and only owner of the said steamboat or vessel called the Patapsco, her engines, machinery, &c., and that said steamboat was at that time lying at the port of New York, within the southern district of New York.

Second. Your respondent, answering the second article of said libel, denies, upon his information and belief, each and every allegation in said article contained, and alleges that said libellant did not, at the times therein stated, nor at any other time, furnish the said steamboat with certain supplies and materials consisting of coals of the value of $1,715 60, as mentioned in the said libel, nor of supplies nor coals of any value whatever.

18 Third. Your respondent, answering the third article in said libel, alleges that he denies each and every allegation therein contained.

Fourth. Your respondent, answering the fourth article in said libel, denies each and every allegation therein contained, and alleges that the said libellant never did, at any time, furnish to the said steamboat Patapsco any supplies, materials, or coals, on the credit of the said steamboat, nor with reference to, and on the credit of, her said bottom; and your respondent further alleges that, at the times mentioned in said libel, the said owners and charterers of said steamboat did have full and complete credit in the said port of Baltimore, without pledging or referring to the bottom of said steamboat Patapsco, or any other ship or vessel whatever.

Fifth. Your respondent denies the fifth article in said libel contained, and alleges that this honorable court has no jurisdiction in this action.

Wherefore your respondent prays this honorable court that
19 said libel be dismissed, with costs, and for such other and further relief as shall be just.

JA'S A. BORLAND.

A. J. HEATH,
Proctor for Claimant.

Sworn to before me this 15th day of May, A. D. 1866.
HENRY MORRIS,
Notary Public for County of New York.

20 (Indorsed:) 19—502. U. S. district court. James Boyce vs. The Steamboat Patapsco, &c. James A. Borland, claimant. Answer. A. J. Heath, claimant's proctor. Filed May 15, '66.

21 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday, the 18

day of Jan'y, in the year of our Lord one thousand eight hundred and sixty-seven—

Present, the Honorable W. D. Shipman, district judge.

JAMES BOYCE
v. } 19—502.
THE ST'SHIP PATAPSCO, &C.

This cause being called in its order on the calendar, ordered hearing. Pleadings read.

Evidence for lib'l'nt..... Read.
Deposition of John C. McGowan..... "
" " James Blaisdell, j'r..... "
" " Sam'l Blaisdell, j'r..... "
" " John Coyne..... "
Certificate of incorporation of Commercial St'b't Company, Ex. K. "
Dep. of John King..... "
" " Jos. S. Prendergast..... "
Attachments from county clerk's office, from Ap'l, 1866..... "
Letter of claimant, Ex. Y..... "
Enrolment of Patapsco..... "
Evidence for claimants..... "
Deposition of David Mordecai..... "
" " Franklin J. Morton..... "
" " Patrick Rooney..... "
" " John Furlong..... "
Jacob B. Smull..... sworn.

Cause adj'd to 23d inst.

Jan'y 30. Cause resumed.
Evidence for cl'm'nts :
22 Reuben D. Nichols sworn.
John R. Bacon.
Bill of sale of Patapsco. Ex. 1 read.
(A deposition to be taken out of court by cl'm'ts.)
Mr. Donohue argues for cl'm'ts.
Mr. D. McMahon " " libellant.
C. A. V.

(Indorsed:) Vol. , No. . United States district court for the southern district of New York. Order. Proctor for . Filed the day of , 186 .

23 Libellant's depositions of witnesses (viz, John C. McGowan, Samuel Blaisdell, j'r, and John Coyne) produced, sworn, and examined the nineteenth day of October, in the year one thousand eight hundred and sixty-six, at the city of Baltimore, at the office of Orville Howitz, esq., under and by virtue of a commission issued out of the district court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein James Boyce is libellant, and The Steamship Patapsco & claimants are defendants.

ISAAC BROOKS, J'R,
Comm'r.

[U. S. int. rev. stamp, 5c., cancelled.]

(ISAAC BROOKS, J'r, *Commissioner.*)

24

25 JOHN C. MCGOWAN, of Baltimore, Maryland, clerk for James Boyce, aged thirty-seven years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellant, doth depose and say as follows:

1st. First interrogatory. What is your name, age, and residence?

To the first interrogatory he saith: John C. McGowan; 37 years of age; Baltimore, Md.

2nd. Second interrogatory. What was your occupation in the months of February and March, 1866?

To the second interrogatory he saith: I was clerk for James Boyce.

3rd. Third interrogatory. Please state where James Boyce resides now; and where he did reside in the months of February and March last, and what is his business.

To the third interrogatory he saith: He resides in Baltimore County now, and did in the months of February and March, 1866. He is miner, shipper, and seller of coal.—(ISAAC BROOKS, J'R, *Commissioner.*)

26

27 4th. Fourth interrogatory. State whether you know of any coal sold and delivered by Mr. James Boyce to the steamship Patapsco, in February and March last; and if so, when was the same delivered, in what quantities, and at what prices.

(Question objected to by claimant's proctor.)

To the fourth interrogatory he saith: I do know of coal been sold and deliaered to the steamer Patapsco, in February and March last; but cannot answer the latter part of the question without reference to a memorandum, (and to this the claimant's proctor objects.)

5th. Fifth interrogatory. Please state the course of dealing, and the mode in which the coal referred to in your last answer was ordered of Mr. Boyce, and the mode in which the same was delivered by him to the steamer.

Ordered by Blaisdell, as agent for the Patapsco.

To the fifth interrogatory he saith: The coal was ordered by Mr. Blaisdell, as agent of the steamship Patapsco; it was ordered in writing; they had a regular printed form which they filled up.

(Here the witness files one of the blank forms, marked Exhibit A,) which blank, filled up, would read as follows:

28 "Mr. James Boyce: Please deliver to steamship Patapsco, with invoice, the following articles: So many tons of soft coal, at the time when the same was needed.

"Yours,

"(Signed) S. BLAISDELL, J'R, *Agent.*"

Thereupon there would be sent to the superintendent at Locust Point, John Coyne, an order to furnish the coal to the steamship Patapsco, in accordance with the order received from Mr. Blaisdell.

6th. Sixth interrogatory. What became of the orders for coal, received from Mr. Blaisdell, after they reached your office?

To the sixth interrogatory he saith: They were filed away until the bill was rendered, and when the bill was rendered they were returned to Mr. Blaisdell with the bill.

7th. Seventh interrogatory. Please look at Exhibits B, C, D, E, F, G, and state what those exhibits signify.

To the seventh interrogatory he saith: These are the orders sent from Mr. Boyce's office to Mr. Coyne, for the delivery of the coal.

8th. Eighth interrogatory. Look at Exhibit H and compare the same with the exhibits referred to in your last answer, and state whether the said Exhibit H corresponds with those exhibits in the quantities of coal delivered.—(ISAAC BROOKS, J'R, *Commissioner.*)

29 To the eighth interrogatory he saith: They do, with two exceptions; one is, one ton more in Exhibit H than is ordered in Exhibit C; the other is two tons more in Exhibit H than ordered in Exhibit G.

9th. Ninth interrogatory. Please state, if you can, the prices at which such coal as was delivered to the Patapsco was selling in the market at the time?

(Question and answer objected to by claimant's proctor.)

To the ninth interrogatory he saith: February the 3rd, coal was selling at 7 dollars and ten cents, delivered; February 10th, it was selling at the same price; February 17th, same price; February 26th, it was selling at seven dollars; March 14th, six and a half; March 24th, six and a half.

10th. Tenth interrogatory. Do you or not know anything of the standing, in Baltimore, of the Commercial Steamboat Company in the months of February and March last?

To the tenth interrogatory he saith: I don't think it was generally known in the community; but there were some few professed to know their standing.—(ISAAC BROOKS, J'R, *Comm'r.*)

30 11th. Eleventh interrogatory. What was its standing?

(Question and answer excepted to by claimant's proctors.)

To the eleventh interrogatory: Not good.

Cross-interrogatories:

1. First cross-interrogatory. How and to whom was this coal, of which you have spoken, charged on the books of Mr. James Boyce?

(Question objected to by libellant's proctor.)

To the first cross-interrogatory he saith: It was charged on the books to the Commercial Steamboat Company, for the Patapsco.

(The claimant's proctor here gives notice to the libellant's proctor to produce the books. He calls for the blotter, & the journal, and the ledger of James Boyce, showing his entire dealings with the Commercial Steamboat Company.)

2nd. Second cross-interrogatory. When did James Boyce begin to furnish coal which he charged to the Commercial Steamboat Company?—(ISAAC BROOKS, J'R, *Comm'r.*)

To the second cross-interrogatory he saith: I don't remember.

31 3. Third cross-interrogatory. When did he stop?

To the third cross-interrogatory he saith: I don't remember.

4. Fourth cross-interrogatory. What amount was furnished during those periods to the Commercial Steamboat Company, to wit, between the period he began furnishing to the period he ended?

To the fourth cross-interrogatory he saith: I can't say.

5. Fifth cross-interrogatory. State the exact amount that the Commercial Steamboat Company was indebted to James Boyce on the 20th of April, 1866.

To the fifth cross-interrogatory he saith: I don't know.

6. Sixth cross-interrogatory. What vessels belonged to the Commercial Steamboat Company?

To the sixth cross-interrogatory he saith: I don't know.—(ISAAC BROOKS, J'R, *Commissioner.*)

32 7. Seventh cross-interrogatory. Was or was not Samuel Blaisdell, j'r, the Baltimore agent of the Commercial Steamboat Company?

To the seventh cross-interrogatory he saith: I so regarded him.

8. Eighth cross-interrogatory. To whom were the bills against the Commercial Steamboat Company sent for payment?

To the eighth cross-interrogatory he saith: To Mr. Blaisdell.

9. Ninth cross-interrogatory. How often were they sent?

To the ninth cross-interrogatory he saith: Once a month.

10. Tenth cross-interrogatory. Were they paid?

To the tenth cross-interrogatory he saith: Sometimes they were paid. (ISAAC BROOKS, J'R, *Comm'r.*)

11. Eleventh cross-interrogatory. Did they or not include different vessels of the Commercial Steamboat Company?

To the eleventh cross-interrogatory he saith: They did.

33 12. Twelfth cross-interrogatory. Was there or not any understanding with the agent as to the time and manner of payment of these bills or accounts?

To the twelfth cross-interrogatory he saith: The coal was sold for cash. That was the agreement with the agent.

13. Thirteenth cross-interrogatory. Do you or not know whether the first bill that was sold by James Boyce to the Commercial Steamboat Company was paid for in cash, and what time was rendered?

(Objected to by libellant's proctor.)

To the thirteenth cross-interrogatory he saith: It was paid for in cash. When it was rendered I do not remember.

14. Fourteenth cross-interrogatory. At what time did the said agent speak to Mr. Boyce about furnishing coals to the Commercial Steamboat Company?

To the fourteenth cross-interrogatory he saith: I don't know.—(ISAAC BROOKS, J'R, *Commissioner.*)

34 15. Fifteenth cross-interrogatory. Look upon claimant's exhibit, marked Exhibit No. 1, and state whether you know the writing thereon.

To the fifteenth cross-interrogatory he saith: That in black ink I do; that in red ink I do not.

16. Sixteenth cross-interrogatory. Who's is it?

To the sixteenth cross-interrogatory he saith: It is my own.

17. Seventeenth cross-interrogatory. What is the exhibit?

To the seventeenth cross-interrogatory he saith: A bill for coal furnished in the month of February, 1866, by James Boyce.

18. Eighteenth cross-interrogatory. To whom, as shown by the exhibit?

To the eighteenth cross-interrogatory he saith: To the Commercial Steamboat Company for the steamers named thereon.

19. Nineteenth cross-interrogatory. Were all bills so made out and sent as monthly bills?

35 To the nineteenth cross-interrogatory he saith: This is the way they were usually made out and sent.—(ISAAC BROOKS, J'R, *Comm'r.*)

20. Twentieth cross-interrogatory. Were the articles that are charged in claimant's Exhibit No. 1 on February 3rd, 10th, 17th, and 26th, the same articles that are shown in Libellant's Exhibit H on the same periods?

To the twentieth cross-interrogatory he saith: They are.

21. Twenty-first cross-interrogatory. Are the articles that are charged in Claimant's Exhibit No. 1 the same that are contained in Libellant's Exhibits B, C, D, & E, viz, the articles that are charged in Claimant's Exhibit No. 1, February 3rd, 10th, 17th, & 26th?

To the twenty-first cross-interrogatory he saith: They are.

Twenty-second cross-interrogatory. Were there other bills like Claimant's Exhibit No. 1 furnished to the Commercial Steamboat Company prior to said exhibit?

(Objected to by libellant's proctor.)

To the twenty-second cross-interrogatory he saith: I think we did, but I can't remember.—(ISAAC BROOKS, J'R, *Comm'r.*)

36 23. Twenty-third cross-interrogatory. State, if you can, how many other bills were rendered the Commercial Steamboat Company prior to March 1st, 1866, and at what times.

To the twenty-third cross-interrogatory he saith: I cannot say.

24. Twenty-fourth cross-interrogatory. Can you say positively whether any other bills than Claimant's Exhibit No. 1 were furnished to the Commercial Steamboat Company?

To the twenty-fourth cross-interrogatory he saith: I can.

25. Twenty-fifth cross-interrogatory. When, and how many?

To the twenty-fifth cross-interrogatory he saith: For coal furnished in March, 1866, the bill was rendered on or about the 1st of April.

Twenty-sixth cross-interrogatory. To whom was this bill rendered on or about the 1st of April?

To the twenty-sixth cross-interrogatory he saith: To Mr. Blaisdell, at Mr. Blaisdell's place of business.—(ISAAC BROOKS, J'R, *Commissioner.*)

37 27. Twenty-seventh cross-interrogatory. Was the Claimant's Exhibit No. 1 then paid?

To the twenty-seventh cross-interrogatory he saith: It was not paid.

Examination-in-chief resumed:

1. First interrogatory. You have stated, in reply to a cross-interrogatory, that the coal spoken of was sold and delivered for cash, by agreement with the agent. Please explain why and how it was that monthly bills for February and March, and probably anterior, were made out by you and sent to the place of business of said agent?

To the first interrogatory he saith: For convenience, and to avoid useless accumulations of bills.

2. Second interrogatory. Please look at Claimants' Exhibit No. 1, item charged under date of "February 5th," ten tons R. M. bit. Eagle, 7 10, $71 00, and state whether you know anything about the said item.

(Question excepted to by claimant's proctor.)

38 To the second interrogatory he saith: I know that the coal so charged was ordered by Mr. Blaisdell in his usual manner, and delivered and paid for.

3. Third interrogatory. You have stated in reply to an interrogatory-in-chief, that the Commercial Steamboat Company was not in good credit in February and March of this year; how does it happen that sales were made of coal by Mr. Boyce during that time?—(ISAAC BROOKS, J'R, *Comm'r.*

(Question excepted to by claimant's proctor.)

To the third interrogatory he saith: Because he had a claim against the steamers for the coal delivered to them.

4. Fourth interrogatory. You have, in replying to a cross-interrogatory, stated that the Exhibit No. 1. of claimant was in your handwriting; how does it happen that the bill is headed Commercial Steamboat Company?

(Question excepted to by claimant's proctor.)

To the fourth interrogatory he saith: The Commercial Steamboat Company controlled the steamers mentioned on that bill.

J. C. McGOWAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 19th day of October, 1866.

ISAAC BROOKS, J'R,
Commissioner.

[U. S. int. rev. stamp, 5-c., cancelled.]

39–40 No. 288.] Orders

OFFICE OF JAMES BOYCE,
Baltimore, 2 *Feb'y*, 1866.

JOHN COYNE:

Deliver to Steamer Patapsco, to-morrow morning, forty tons run of mine bituminous coal.

JAMES BOYCE,
Per CROOK.

(Indorsed:) J. C. McGowan—Exhibit B.

No. 295.]

OFFICE OF JAMES BOYCE,
Baltimore, 9 *Feb'y*, 1866.

JOHN COYNE:

Deliver to Steamer Patapsco (to-morrow morning early) forty tons run of mine bituminous coal.

JAMES BOYCE,
Per CROOK.

(Indorsed:) J. C. McGowan—Exhibit C.

No. 302.]

OFFICE OF JAMES BOYCE,
Baltimore, Feb'y 16, 1866.

Deliver to Steamer Patapsco (to-morrow by noon) fifty tons run of mine bituminous coal.

JAMES BOYCE,
Per McGOWAN.

(Indorsed:) J. C. McGowan—Exhibit D.

No. 330.]

OFFICE OF JAMES BOYCE,
Baltimore, M'ch 13, 1866.

Deliver to Steamer Patapsco by 12 o'clock to-morrow, certain, 25 tons of run of mine bituminous coal.

JAMES BOYCE,
Per McGOWAN.

(Indorsed:) J. C. McGowan—Exhibit F.

41 CL'M'T'S EXHIBIT No. 1.—*J. A. Borland.*

BALTIMORE, *March 1st*, 1866.

Commercial Steamboat Co. to James Boyce, Dr.

Feb.	3rd.	40 tons	R. M. bit.	Patapsco,	$7 10		$284 00
	5th.	10 "	" "	Eagle,	"		71 00
	6th.	80 "	" "	Kingfisher,	"		568 00
	10th.	41 "	" "	Patapsco,	"		291 10
	17th.	50 "	" "	"			355 00
	21st.	25 "	anthracite	Sea Gull,	9 50		237 50
	22nd.	70 "	R. M. bit.	Kingfisher,	7 10		497 00
	26th.	50 "	" "	Patapsco,	7 00		350 00
	28th.	65 "	anthracite	Sea Gull,	8 50		552 50
							$3,206 10
Less "Eagle," Feb. 5th							71 00
							$3,135 10

EXHIBIT H.—*J. C. McGowan.*

Steamer Patapsco to James Boyce, Dr.

1866.

Feb.	3rd.	40 tons	bit. coal,	$7 10		$284 00
	10th.	41 "	" "	7 10		291 10
	17th.	50 "	" "	7 10		355 00
	26th.	50 "	" "	7 00		350 00
M'ch	14th.	25 "	" "	6 50		162 50
	24th.	42 "	" "	6 50		273 00
						$1,715 60

42

43–44 No. 347.] OFFICE OF JAMES BOYCE,
Baltimore, 22 *March*, 1866.

Deliver to Steamship Patapsco (Saturday morning early) forty tons run of mine bituminous coal.

JAMES BOYCE,
Per CROOK.

To JOHN BOYCE,
Locust Point.

(Indorsed:) J. C. McGowan—Exhibit G.

No. 309.] OFFICE OF JAMES BOYCE,
Baltimore, Feb. 26, 1866.

Deliver to Steamer Patapsco (to-morrow) fifty tons run of mine bituminous coal.

JAMES BOYCE,
Per McGOWAN.

Mr. JOHN COYNE.

(Indorsed:) J. C. McGowan—Exhibit E.

45 [Form 16.]

OFFICE COMMERCIAL STEAMBOAT CO.,
Flannigan's Wharf, Baltimore, 186

M

Please deliver to steamship , with invoice, the following articles:

Yours,

(Written across the end:) Commercial Steamboat Company.

46 (Indorsed:) Exhibit A—J. C. McGowan.

47 SAMUEL BLAISDELL, j'r, of the city of Baltimore, agent for the Commercial Steamboat Company, aged thirty-one years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellant, doth depose and say as follows:

1. First interrogatory. What is your name, age, and residence?

To the first interrogatory, he saith: My name is Samuel Blaisdell, j'r; I am thirty-one years of age, and at present I reside in Baltimore.

2. Second interrogatory. What was your occupations in the months of February and March last?

To the second interrogatory he saith: I was acting as agent for the Commercial Steamboat Company.

3. Third interrogatory. Please state whether the Patapsco was one of the steamers under the control of the said Commercial Steamboat Company?—(ISAAC BROOKS, J'R, *Comm'r.*)

To the third interrogatory he saith: She was one of the steamers running in the line of the Commercial Steamboat Company,
48 between Baltimore and New York, and under my control when here?

4. Fourth interrogatory. By means of what sort of fuel was said steamer navigated?

To the fourth interrogatory he saith: By soft coal.

5. Fifth interrogatory. From whom was the coal for navigating the said steamer Patapsco obtained during the months of February and March last?

To the fifth interrogatory he saith: It was obtained from Mr. James Boyce.

6. Sixth interrogatory. Please state who ordered the coal, in what mode it was ordered, and how it was delivered?

To the sixth interrogatory he saith: I ordered the coal; it was ordered by orders being sent to Mr. Boyce's office; following the form of Exhibit A, by putting in the name of the steamer, the quantity of coal, and the time it was to be delivered.—(ISAAC BROOKS, J'R, *Comm'r.*

7. Seventh interrogatory. Please look at Exhibit H, and state, if you can, whether it contains a correct account of coal delivered to the Patapsco, upon your orders to Mr. Boyce, during the months of February and March?

(Question excepted to by claimant's proctor.)

49 To the seventh interrogatory he saith: It does.

8. Eighth interrogatory. State, if you know, by the laws of what State the Commercial Steamboat Company is incorporated?

(Question excepted to by claimant's proctor.)

To the eighth interrogatory he saith: By the laws of the State of Rhode Island.

9. Ninth interrogatory. At that time that the said coal was furnished to the Patapsco, in the months of February and March last, were you, as the agent, in possession of any coal, by which the said steamer Patapsco could have been supplied independent of the coal obtained from Mr. Boyce.

To the ninth interrogatory he saith: I was not.—(ISAAC BROOKS, J'R, *Comm'r.*)

10. Tenth interrogatory. Please state on what terms the said coal was purchased of Mr. Boyce?

To the tenth interrogatory he saith: The coal was purchased at the lowest price.

50 Cross-interrogat'ries:

1. First cross-interrogatory. When did you begin purchasing coal coal from Mr. Boyce, as agent of the Commercial Steamboat Company?

To the first cross-interrogatory he saith: I cannot state exactly.

2. Second cross-interrogatory. State as nearly as you can?

To the second cross-interrogatory he saith: I think sometime in December last, 1865.

3. Third cross-interrogatory. When did you stop purchasing?

To the third cross-interrogatory he saith: Sometime in April.—(ISAAC BROOKS, J'R, *Comm'r.*)

4. Fourth cross-interrogatory. Do you or not know the amount in dollars of all the coal purchased during those periods, from Mr. Boyce, for the said company?

To the fourth cross-interrogatory he saith: I do not.

7. Seventh cross-interrogatory. How were the bills rendered?

51 To the seventh cross-interrogatory he saith: Generally monthly?

8. Eighth cross-interrogatory. Were they made out as Claimant's Exhibit No. 1?

To the eighth cross-interrogatory he saith: They were.

9. Ninth cross-interrogatory. Were they all paid, prior to February last?

To the ninth cross-interrogatory he saith: I cannot say.

(Here the claimant's proctor asks the witness whether he has the blls rendered by Mr. James Boyce to the Commercial Steamboat Company, prior to March, 1866, and the witness says he has not got them.)—(ISAAC BROOKS, J'R, *Comm'r.*)

10. Tenth cross-interrogatory. What has become of them?

To the tenth cross-interrogatory he saith: I do not know.

11. Eleventh cross-interrogatory. Were not some of them paid by you as agent of the Commercial Steamboat Company?

52 To the eleventh cross-interrogatory he saith: They were.

12. Twelfth cross-interrogatory. How many?

To the twelfth cross-interrogatory he saith: I cannot tell.

13. Thirteenth cross-interrogatory. Did you or not at the time, or immediately prior thereto, of purchasing the coal, speak to Mr. Boyce or any of his employees about purchasing coal for the Commercial Steamboat Company; and if so, what was said?

(Objected to by libellant's proctor.—(ISAAC BROOKS, J'R, *Comm'r.*)

To the thirteenth cross-interrogatory he saith: I had some conversation with Mr. Boyce regarding furnishing the steamer with coal, asking him the prices. Anything further of our conversation I cannot remember.

14. Fourteenth cross-interrogatory. How soon after making the first purchase of coal from Mr. Boyce was the bill therefor sent to you for payment?

To the fourteenth cross-interrogatory he saith: I cannot say.

15. Fifteenth cross-interrogatory. Was that bill paid on presentation?

53 To the fifteenth cross-interrogatory he saith: I cannot say.

16. Sixteenth cross-interrogatory. When you signed orders like Exhibit A of libellant, how did you sign them?

To the sixteenth cross-interrogatory he saith: I signed them as agent. I wrote Samuel Blaisdell, j'r, agent.

17. Seventeenth cross-interrogatory. As agent of what?—(ISAAC BROOKS, J'R, *Comm'r.*)

(Question objected to by libellant's proctor.)

To the seventeenth cross-interrogatory he saith: As the agent of the owners of the property in my possession.

18. Eighteenth cross-interrogatory. Of what property in your possession?

To the eighteenth cross-interrogatory he saith: I do'nt understand the question.

19. Nineteenth cross-interrogatory. When you signed papers like Exhibit A, as agent, did you sign that paper as agent of the Commercial Steamboat Company or not.

(Question objected to by libellant's proctor.)

54 To the nineteenth cross-interrogatory he saith: I signed Samuel Blaisdell, j'r, agent.

20. Twentieth cross-interrogatory. When you signed papers like Exhibit A, as agent, did you sign that paper as agent of the Commercial Steamboat Company or not?

(Question objected to by libellant's proctor.)

To the twentieth cross-interrogatory he saith: The Commercial Steamboat Company was not written on the form as Exhibit A, appended to my signature.—(ISAAC BROOKS, J'R, *Comm'r.*)

21. Twenty-first cross-interrogatory. When you signed those papers like Exhibit A, as agent, was it in the character of agent of the Commercial Steamboat Company?

(Question objected to by libellant's proctor.)

To the twenty-first cross-interrogatory he saith: I meant it as the agent of the Commercial Steamboat Company.

22. Twenty-second cross-interrogatory. What vessels were owned and chartered and run by the Commercial Steamboat Company whilst you were agent?

55 To the twenty-second cross-interrogatory he saith: The Steamship "Kingfisher," the "Sea Gull," "Falcoln," "Patapsco," "John Gibson," "Westchester," & the "Eagle," and the "Metis."

23. Twenty-third cross-interrogatory. When did said company begin to run their boats between New York and Baltimore, and when did they stop running?

To the twenty-third cross-interrogatory he saith: They began some time in the month of August, 1865. I cannot give the exact date. They stopped running some time in the month of April, 1866.—(ISAAC BROOKS, J'R, *Comm'r.*)

24. Twenty-fourth cross-interrogatory. Were you their agent during that time.

To the twenty-fourth cross-interrogatory he saith: I was.

25. Twenty-fifth cross-interrogatory. Did you purchase, during that time, coal for said steamboat company from any other person or persons than Mr. Boyce?

(Objected to by libellant's proctor.)

To the twenty-fifth cross-interrogatory he saith: I did.

56 26. Twenty-sixth cross-interrogatory: Was that coal paid for?

(Objected to by libellant's proctor.)

To twenty-sixth cross-interrogatory he saith. It was paid for.

27. Twenty-seventh cross-interrogatory. How soon after the purchase thereof were the bills presented for payment?

(Objected to by libellant's proctor.)

To the twenty-seventh cross-interrogatory he saith: I cannot say.—(ISAAC BROOKS, J'R, *Comm'r.*)

28. Twenty-eighth cross-interrogatory. Was it generally paid for on delivery?

(Objected to by libellant's proctor.)

To the twenty-eighth cross-interrogatory he saith: It was not.

A. 28. Twenty-eight (A) cross-interrogatory. During the period of the said existence of this said steamboat company, were or were not their dealings in Baltimore large?

(Objected to by libellant's proctor.)

To the twenty-eighth (A) cross-interrogatory he saith: I considered them so.

29. Twenty-ninth cross-interrogatory. Was not their credit good?

To the twenty-ninth cross interrogatory he saith: I never asked for credit; I do not know.—(ISAAC BROOKS, J'R, *Commissioner.*)

57 Thirtieth cross-interrogatory. Did or did not the bills of Mr. Boyce which were sent you, include coals furnished to the different vessels of the said company, such as are contained in exhibit marked Exhibit No. 1.

To the thirtieth cross-interrogatory he saith: They did.

(Here the claimant's proctor files as part of the testimony of Mr. Samuel Blaisdell in this cause, exhibit marked "Claimant's Exhibit No. 2," and asks Mr. Blaisdell the following question:)

31. Thirty-first cross-interrogatory. Whether that exhibit was written by him?

To the thirty-first cross-interrogatory he saith: It was written by me.

Examination-in-chief resumed:

1. First interrogatory. Did you or not, during the months of February and March last, purchase coal for any of the steamers under your control at the time, of any other person or persons than Mr. Boyce?

To the first interrogatory he saith: I did not.

2. Second interrogatory. When you speak of the transactions of the Commercial Steamship Company in this community as large, please state whether the said company bought in this market anything but

58 supplies for their steamers, and were they bought for cash or on credit?—(ISAAC BROOKS, J'R, *Comm'r.*)

To the second interrogatory he saith: They bought nothing but steamer supplies. The supplies so bought were considered cash.

Cross-examination resumed:

1. First cross-interrogatory. Were they paid for at the time they were purchased and delivered?

To the first cross-interrogatory he saith: Sometimes they were and sometimes they were not.

2. Second cross-interrogatory. How much supplies were furnished these vessels, for which you paid during your agency thereof?

To the second cross-interrogatory he saith: I cannot state exactly; from seventy-five to one hundred thousand dollars.

3. Third cross-interrogatory. How much money did you disburse for said company as their agent?

To the third cross-interrogatory he saith: About one hundred thouand dollars.

SAMUEL BLAISDELL, J'R.

(ISAAC BROOKS, J'r., *Comm'r.*)

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 19th day of October, 1866, before

ISAAC BROOKS, J'R,
Commissioner.

59 OFFICE OF THE COMMERCIAL STEAMBOAT COMPANY,
FLANNIGAN'S WHARF, *Baltimore, May 19th*, 1866.

JAMES BORLAND & CO,
53 *South St., New York.*

GENTLEMEN: Your favor of the 18th, with enclosed note, is at hand, and I note contents, and will answer your questions to the best of my ability:

1st. The coal bought for the steamship Patapsco was ordered for this steamer expressly, but on account of the Commercial Steamboat Company, the same as all coal was ordered and bought for the several steamers constituting the line.

2nd. The coal was purchased by myself, and ordered sent to Mr. Boyce, over my own signature as agent of the Commercial Steamboat Company.

3rd. The owners or charterers were not known in the transaction, but the steamer was supposed to belong to the C. S. B. Co. by the parties who furnished the coal, and were never informed to the contrary by me.

4th. The coal was bought for and charged to the steamer Patapsco, on account of the C. S. B. Co.

In answer to the question contained in your communication, I reply—

(ISAAC BROOKS, J'R, *Comm'r.*)

1st. The coal from Mr. Boyce for the Patapsco was not delivered from a quantity previously bought, but was ordered and delivered to
60 the steamer in quantities as designated by the engineer.

2nd. The bills were rendered according to the orders given monthly, and the amount ordered for each steamer for the month was specified on the face of the bill.

3rd. I did, as agent, make the purchase of coal used by all the steamers of the line.

4th. I think I shall have no trouble in seeing Mr. Boyce's books and getting copies of his entries therein. Any further information you may wish in the premises I shall be pleased to furnish you.

Respectfully, yours,

SAMUEL BLAISDELL, J'R,
Agent.

Claimant's Exhibit No. 2—J. A. Borland.

(ISAAC BROOKS, J'R, *Commissioner.*)

61 JOHN COYNE, of the city of Baltimore, superintendent of the

coal-yard of Mr. James Boyce, at Locust Point, aged thirty-nine years and upwards, being duly sworn pursuant to the directions hereto annexed, and examined on the part of the libellant, doth depose and say as follows:

1. First interrogatory. What is your name, age, and residence?

To the first interrogatory he saith: My name is John Coyne; I am thirty-nine years of age, and reside in the city of Baltimore.

2. Second interrogatory. What was your occupation in the months of February and March last?

To the second interrogatory he saith: I was superintendent of the coal-yard of Mr. Boyce, at Locust Point.—(ISAAC BROOKS, J'R, *Comm'r.*)

3. Third interrogatory. Look at the Exhibits B, C, D, E, F, G, and say if you delivered the coal therein named, and to what vessel?

To the third interrogatory he saith: I delivered the coal therein stated to the steamer Patapsco.

JOHN COYNE.

62 Examination taken, reduced to writing, and by the witness subscribed and sworn to this 19th day of October, 1866, before—

ISAAC BROOKS, J'R,
Commissioner.

The proctor for the libellant does not produce the books called for by the proctor for the claimant.

ISAAC BROOKS, J'R,
Commissioner.

(ISAAC BROOKS, J'R, *Comm'r.*)

I, Isaac Brooks, j'r, United States commissioner, appointed by the circuit court of the United States for the fourth circuit in and for the Maryland district, do hereby certify that, on the 21st day of November, eighteen hundred and sixty-six, at my office, in the city of Baltimore, within the district of Maryland, in the case of James Boyce vs. Steamer Patapsco, James A. Borland, claimant, the books called for by proctor for claimant were produced, to wit, the journal and ledger; the day-book was not produced, the proctor for claimant waiving the production of it. I further certify that the following are the entries in the journal:

BALTIMORE, *January*, 1866.

COMMERCIAL STEAMBOAT COMPANY:

65	tons W. A. lump, st'r Falcon, L. P't, $9 85		$640 25
	25 " " " " " " " " 10 30		257 50
63	70 tons W. A. lump, st'r Falcon, L. P't, 9 85		689 50
	84¼ " in cars, wharf, 9 50		800 38
53	" " " 9 50		508 73
			2,896 36

(ISAAC BROOKS, JUN'R, *Comm'r.*)

BALTIMORE, *January*, 1866.

COMMERCIAL STEAMBOAT COMPANY:

70	tons	Geo.	C'r'k,	st'r	Sea Gull,	$7 10	$497	
50	"	"	"	"	Patapsco,	7 10	355	
80	"	"	"	"	Kingfisher,	7 10	568	
50	"	"	"	"	"	7 10	355	
66	"	"	"	"	Patapsco,	7 10	468	60
40	"	"	"	"	"	7 10	284	
60	"	"	"	"	Kingfisher,	7 10	426	
							2,953	60

BALTIMORE, *February*, 1866.

COMMERCIAL STEAMBOAT COMPANY:

25	tons	W. A.	lump,	L. P't,		$9½	237	50
65	"	"	"	"	"	8½	552	50
							790	

BALTIMORE, *February*, 1866.

COMMERCIAL STEAMBOAT COMPANY:

10	tons	R. M.	coal,	st'r	Eagle	$7 10	71	
80	"	"	"	"	Kingfisher,	7 10	568	
41	"	"	"	"	Patapsco,	7 10	291	10
50	"	"	"	"	"	7 10	355	
70	"	"	"	"	Kingfisher,	7 10	497	
50	"	"	"	"	Patapsco,	7 00	350	
40	"	"	"	"	"	7 10	284	
							2,416	10

(ISAAC BROOKS, J'R, *Commissioner.*)

64 BALTIMORE, *March*, 1866.

COMMERCIAL ST'B'T CO.:

80	tons	Geo.	C'k,	st'r	Kingfisher,	$7	$560	
25	"	"	"	"	Patapsco,	7	175	
80	"	"	"	"	Kingfisher,	7	560	
42	"	"	"	"	Patapsco,	7	294	
							1,589	

BALTIMORE, *April*, 1866.

COMMERCIAL ST'B'T CO.:

75	tons	W. A.	coal,	Union,		7½	562	50
60	"	"	"	"	North,	7½	450	
60	"	"	"	"	"	7½	450	
							1,462	50

BALTIMORE, *April*, 1866.

COMMERCIAL ST'B'T CO.:

10 tons R. M. coal, st'r Eagle, 6½ $65

And I do also certify that the following entries are a true and full transcript of the ledger:

COMMERCIAL ST'B'T CO. DR.

1866.			
Jan'y 30th.	To coal ac	2,896	36
" "	" bituminous ac	2,963	60
Feb. "	" coal ac	790	
Feb.	" bituminous ac	2,416	10
Mar.	" coal ac	1,550	
"	" bituminous ac	1,589	
April.	" coal ac	1,462	50
"	" bituminous ac	65	
May 16.	" cash	39	10
		13,761	66

(ISAAC BROOKS, J'R, *Commissioner.*)

65 CR.

Feb. 5th.	By cash	3,000	
" 9th.	" "	1,000	
" 15th.	" "	1,849	96
Mar. 30th.	" coal ac	73	50
May 5th.	" cash	136	
June 30th.	" "	3,008	41
" "	" balance	4,693	79
		13,761	66

(ISAAC BROOKS, J'R, *U. S. Comm'r.*)

DR.

To balance	4,693	79

Given under my hand and seal at the city of Baltimore, within the district of Maryland, this 21st day of November, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] ISAAC BROOKS, J'R,
U. S. Commissioner for District of Maryland.

[Int. rev. stamp, 5c., cancelled.]

Certificate of incorporation of Commercial Steamboat Co'y, Ex. X, produced and read in evidence for libellant, (printed pamphlet,) being an act of the legislature of the State of Rhode Island incorporating the Commercial Steamboat Company.

66 Deposition of JOHN KING, j'r, taken on the 12th day of January, eighteen hundred sixty-seven, at Isaac Brooks, j'r's, office in the city of Baltimore, within the district of Maryland, on the part of the libellant in this cause, before said Isaac Brooks, j'r, a United States commissioner.

The said John King, j'r, being duly sworn according to law, and being examined on behalf of the libellant, deposeth and saith as follows, to wit:

1. 1st interrogatory. What was your occupation in the month of January, 1865, and in the month of February, 1865?

To the first interrogatory he saith: I was auditor and general freight agent of the Baltimore and Ohio Railroad Co.

2. Second interrogatory. Were you acquainted with the Commercial Steamboat Company, of Providence, Rhode Island; and if so, what was the business of said company, and for how long were you so acquainted with it?

To the second interrogatory he saith: I was acquainted with the Commercial Steamboat Company, I can't tell how long. The business, as far as I know, was to run steamers between New York & Baltimore, & Baltimore and Charleston.

67 3. Third interrogatory. Look at these papers and say for what and under what circumstances said papers were executed; and state, if you please, the reason for their execution.

(Question objected to.)

To the third interrogatory he saith: The Commercial Co. owed the Baltimore & Ohio Co. a debt, to secure which these mortgages were obtained.

4. Fourth interrogatory. For what was the said debt contracted?

(Question excepted to.)

To the fourth interrogatory he saith: For charge on freight delivered to Commercial Steamboat Company.

5. Fifth interrogatory. How were those charges to be paid; were they to be paid cash or credit?

(Question excepted to.)

To the fifth interrogatory he saith: A credit of ten days.

6. Sixth interrogatory. How then did it happen that the mortgages above referred to were given, if the arrangement was that the amount should be paid in ten days?

(Question excepted to.)

To the sixth interrogatory he saith: Because they did not pay.

7. Seventh interrogatory. Did you or not make the arrangement with the said company for the giving and executing the said mortgage re-referred to?

(Question excepted to.)

68 To the seventh interrogatory he saith: I did.

8. Eighth interrogatory. Whose property are the three papers heretofore referred to as mortgages?

(Question excepted to.)

To the eighth interrogatory he saith: The Baltimore and Ohio Railroad Company.—(ISAAC BROOKS, J'R, *U. S. Comm'r.*)

9. Ninth interrogatory. What is your present office in that road?

To the ninth interrogatory he saith: I am vice-president.

10. Tenth interrogatory. Are you willing to allow the said mortgages to be returned, in this commission, to New York?

To the tenth interrogatory he saith: I am unwilling.

(Here the proctor for the libellant, requires the commissioner to make certified copies of said papers to be returned with said commission.)

11. Eleventh interrogatory. Did you or not take any proceedings under said mortgages or otherwise, to recover the amount of the claim due to the Baltimore and Ohio Railroad? And, if so, state what proceedings were taken, and what amount of the claim was obtained, as nearly as you can.

(Question excepted to.)

To the eleventh interrogatory he saith: We sold the property of the said Commercial St'b't Co., under attachments and the said mortgages. We don't regard that we were fully paid our debt under the settlement.

No cross-examination.

JOHN KING, J'R.

69 Subscribed and sworn to before me this 12th day of January, 1867.

ISAAC BROOKS, J'R.
U. S. Commissioner for District of Maryland.

Deposition of James F. Pendergast, taken on the twelfth day of January, 1867, at Isaac Brooks, j'r's office, in the city of Baltimore, within the district of Maryland, on the part of the libellant in this cause before said Isaac Brooks, j'r, a United States commissioner.

The said JAMES F. PENDERGAST, being duly sworn according to law, and being examined on behalf of the libellant, deposeth and saith as follows, to wit:

1. First interrogatory. What is your occupation, and where do you carry it on?

To the first interrogatory he saith: I am a shipping merchant in New York and Baltimore.

2. Second interrogatory. Were you or not acquainted with the Commercial Steamboat Company of Providence, in the months of February and March last? and if yea, state what was the condition of said company as to solvency at that time, and how you know said condition.

To the second interrogatory he saith: I was acquainted with them; I had some negotiations pending with them, which led me to make close inquiries as to their character and solvency. These inquiries were
70 not satisfactory, and led me to believe they were insolvent, and the negotiations were broken off. One of the reasons—I was made aware of existing mortages held by the Baltimore and Ohio Railroad Company on their steamers, and an application was made to me by one of the officers of the Commercial St'b't Co. to loan them money on their stock, which I declined, as I had learned that the president of the company was then under protest for his own, as well as the company's liabilities.

3. Third interrogatory. When was this application made to you to loan money to them?

To the third interrogatory he saith: I think in February.—(ISAAC BROOKS, J'R, *U. S. Comm'r.*)

4. Fourth interrogatory. Did you communicate any of that information, so obtained by you, to Mr. Boyce, shortly thereafter; and if so, what and when?

To the fourth interrogatory he saith: I did, shortly afterwards. The substance was about as above stated.

Cross-examined:

1. First cross-interrogatory: Where do you live?

To the first cross-interrogatory he saith: I live at Baltimore now.

2. Second cross-interrogatory. How long have you been living here?

To the second cross-interrogatory he saith: Since July last.

71 3. Third cross-interrogatory. Where did you live before July last.

To the third cross-interrogatory he saith: I lived in New Jersey.

4. Fourth cross-interrogatory. How long did you live in New Jersey prior to July last?

To the fourth cross-interrogatory he saith: Nearly two years.

5. Fifth cross-interrogatory. Can you state positively that you were in the city of Baltimore in February, 1866.

To the fifth cross-interrogatory he saith: I think I can.

6. Sixth cross-interrogatory. What were the negotiations which led you to make close inquiries into the character and solvency of the Commercial Steamboat Company?

To the sixth cross-interrogatory he saith: The establishment of a coastwise steamship company, in which I was to be largely interested with them, to wit, the Commercial Steamboat Company.

7. Seventh cross-interrogatory. With whom were these contemplated negotiations had?

To the seventh cross-interrogatory he saith: With Mr. Bacon, the president of the company.

72 Eighth cross-interrogatory. Of whom did you make these close inquiries as to the character and solvency of the Commercial St'b't Co.?

To the eighth cross-interrogatory he saith: Of different parties.

9. Ninth cross-interrogatory. Name them.

To the ninth-cross interrogatory he saith: I cannot; I received the information from private channels which I do not wish to disclose.

(The respondent and claimant's proctor here insists upon a disclosure of the names of the parties from whom the witness received his information as to the character and solvency of the Commercial Steamboat Company, and asks the following question:)

10. Tenth cross-interrogatory. Of whom did you make these close inquiries as to the character and solvency of the Commercial Steamboat Company?

To the tenth cross-interrogatory he saith: Declined to answer, as given in a confidential manner, except so far as the mortgages are concerned, which information was given me by A. C. Hall, in Baltimore.

(Here the respondent's proctor compelling an answer, the witness says:)

It was given me by J. B. Smull, the New York agent of the company, and other parties on Wall street, whose names I do not now remember.—(ISAAC BROOKS, J'R, *U. S. Commissioner.*)

73 11. Eleventh cross-interrogatory. Where was it given to you by Mr. Smull?

To the eleventh cross-interrogatory he saith: In New York.

12. Twelfth cross-interrogatory. At what place in New York, and what were you doing at the time?

To the twelfth cross-interrogatory he saith: At a house, taking dinner.

13. Thirteenth cross-interrogatory. With whom were you dining?

To the thirteenth cross-interrogatory he saith: With Mr. Smull.

14. Fourteenth cross-interrogatory. With any one else?

To the fourteenth cross-interrogatory he saith: With several others.

Fifteenth cross-interrogatory. Can you name any of the others?

To the fifteenth cross-interrogatory he saith: No.—(ISAAC BROOKS, J'R, *U. S. Comm'r.*)

16. Sixteenth cross-interrogatory. Had Mr. Smull been drinking?

To the sixteenth cross-interrogatory he saith: I presume he had, as we had a bottle of sherry.

17. Seventeenth cross-interrogatory: When was this?

74 To the seventeenth cross-interrogatory he saith: Some time in February, I think.

18. Eighteenth cross-interrogatory. What officer of the Commercial St'b't Co. made the application to you to loan them money on their stock?

To the eighteenth cross-interrogatory he saith: John B. Smull, the agent.

Nineteenth cross-interrogatory. When was this?

To the nineteenth cross-interrogatory he saith: The same time above stated.

20. Twentieth cross-interrogatory. Do you refer to the time of the dinner?

To the twentieth cross-interrogotory he saith: After dinner.

21. Twenty-first cross-interrogatory. From whom did you learn that the president of the company was, in February and March, under protest for his own as well as the company's liabilities?

To the twenty-first cross-interrogatory he saith: I don't remember; the report was general in Wall street.

22. Twenty-second cross-interrogatory. What induced you to communicate to Mr. Boyce the information you had obtained confidentially, and which you at first declined to give here, from Mr. J. B. Smull, as to the character and solvency of the said steamboat company?

(Question excepted to.)

75 To the twenty-second cross-interrogatory he saith: Friendship.

23. Twenty-third cross-interrogatory. Did you tell any one else?

To the twenty-third cross-interrogatory he saith: I don't remember.—(ISAAC BROOKS, J'R, *U. S. Comm'r.*)

24. Twenty-fourth cross-interrogatory. When was this?

To the twenty-fourth cross-interrogatory he saith: Some time, I think, in February or March. I don't exactly remember.

25. Twenty-fifth cross-interrogatory. How long have you known Mr. Boyce?

To the twenty-fifth cross-interrogatory he saith: Many years.

26. Twenty-sixth cross-interrogatory. Did you fall in love at first sight?

To the twenty-sixth cross-interrogatory he saith: I don't remember.

Redirect:

First redirect interrogatory. Were you not in the habit of going from New York to Baltimore, and from Baltimore to New York frequently, in the superintendence of your business at both places, in the early part of 1866?

To the first redirect interrogatory he saith: Very frequently.

JAMES F. PENDERGAST.

Subscribed and sworn to before me this 12th day of January, 1867.

ISAAC BROOKS, J'R,

U. S. Commissioner for District of Maryland.

[U. S. int. rev. stamp, 50c., cancelled.]

76 *Synopsis of one of the three mortgages on the steamship "Falcon," referred to in the testimony of John King, j'r.*

Name of mortgagor: The Commercial Steamboat Company of Providence, Rhode Island.

Name of mortgagee: John King, j'r, auditor of the Baltimore and Ohio Railroad Company.

When acknowledged: February 6th, A. D. 1866.

When recorded: February 9th, 1866, 9.30 a. m.

Where recorded: Custom-house at Providence, liber E, folio 87 & 88. Certified by deputy collector, register of sales and transports.

What given to secure: Two promissory notes, with interest at seven per cent., dated Feb'y 3rd, 1866, made by the Commercial St'b't Company, payable, respectively, at sixty and seventy-five days from date, for seventy-five hundred dollars each, both drawn to the order of John King, j'r, auditor of the Baltimore and Ohio Railroad Company. Mortgage contains policy or policies of insurance against loss or damage by fire or by the perils of the sea, in at least the sum of fifteen thousand dollars.

What is mortgaged: The steamer "Falcon," of Providence, built at Mystic Bridge, State of Connecticut, A. D. 1861, as appears by enrollment No. 32, issued at the port of Providence, Nov. 18th, 1861.

77 The said ship or vessel has two decks and three masts. Her length is $155\frac{8}{10}$ feet; breadth is $34\frac{7}{10}$ feet; depth is $16\frac{8}{10}$ feet. She measures six hundred and seventy-one $\frac{90}{100}$ tons; is a steam propeller; has a square stern; no galleries and no head, together with the *whole*, the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appertaining and belonging; enrolled in the name of the Commercial Steamboat Company as owners; H. T. Aldrich as master. Mortgage contains power of sale on default. To be sold at public auction in the city of New York, after ten days' previous notice in the New York Daily Times.

Synopsis of one of the three mortgages on the steamship "Sea Gull," referred to in the testimony of John King, j'r.

Name of mortgagor: The Commercial Steamboat Company of Providence, Rhode Island.

Name of mortgagee: John King, j'r, auditor of the Baltimore and Ohio Railroad Company.

When acknowledged: February 6th, A. D. 1866.

When recorded: February 9th, 1866, 9.30 a. m.

78 Where recorded: Custom-house at Providence, liber E, folio 85 & 86. Certified by deputy collector, register of sales and transports.

What given to secure: Two promissory notes, with interest at seven per cent., date Feb'y 3rd, 1866, made by the Commercial St'b't Co., payable, respectively, at ninety and one hundred and five days from date, for seventy-five hundred dollars each, both drawn to the order of John King, j'r, auditor of the Baltimore and Ohio Railroad Company. Mortgage contains insurance clause of policy or policies for at least the sum of fifteen thousand dollars.

What is mortgaged: The steamer "Sea Gull," built at Mystic Bridge, Connecticut, A. D. 1863, as appears by enrollment No. 32, issued at this port of Providence, January 23rd, 1863. The said ship or vessel has two decks and three masts. Length is $156\frac{5}{10}$ feet; breadth is $33\frac{7}{10}$

feet; depth is $16\frac{4}{10}$ feet, and measures six hundred and sixteen $\frac{94}{100}$ tons; is a steam propeller; has a round stern, and no galleries and no head, together with the *whole*, the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereu'to appertaining and belonging; enrolled in the name of the Commercial St'b't Company as
79 owners; Samuel D. Walden as master. Mortgage contains power of sale on default. To be sold at public auction, in the city of New York, after ten days' previous notice in the New York Daily Times.

Synopsis of one of the three mortgages referred to by John King, j'r, in his testimony.

The Commercial Steamboat Co. to John King, j'r. Mortgage on steamship "Kingfisher," dated .

Acknowledged Feb. 6th, 1866. Recorded Feb. 9th, 1866; 9 30 a. m., in custom-house, at Providence. Liber E. folio 83 & 84. Certified by deputy collector, register of sales & transports.

Mortgaged: The steamer Kingfisher, built at Mystic, Connecticut, 1863, as appears by enrollment No. 41, issued at the port of Providence, Feb. 28th, 1863. The said ship or vessel has two decks and three masts. Length is 157 feet. Breadth is $33\frac{5}{10}$ feet. Depth is $16\frac{4}{10}$ feet, and she measures $631\frac{82}{100}$ tons; is a screw-propeller; has a round stern and no head. Given to secure: Two promissory notes with interest at seven per cent., dated February 3rd, 1866, payable respectively at thirty and forty-five days from date for seventy-five hundred dollars each, both drawn to the order of John King, j'r, auditor of the Baltimore & Ohio R. R. Co. Mortgage contains insurance clause in $15,000. To
80 be sold at public auction in case of default, with ten days' previous notice in the New York Daily Times.

Abstract of attachments referred to in above stenographic minutes and read in evidence.

1 THE NEPTUNE ST'B'T CO.
vs.
THE COMMERCIAL ST'B'T CO.

Attachment issued Apr. 10th, '66.
Judgement entered May 19th, '66, for..... $26,426 21
Money advanced, paid, laid out & expended to and for use of defendant, amounting to $52, 271 45
Between 27th M'ch, '65, & Feb. 1, '66; bal. due $25,800, & int. from Feb. 1, 1866.

2 THE MERCHANTS' ST'SHIP CO.
vs.
SAME.

Attachment issued April 10th, '66; demanded for $19, 764 12
Judgement entered May 19th, '66, for..... 20,436 17
No credit whatever given on this demand; all accrued before January 15th, 1866.
1. Coal $156\frac{12}{20}$ tons (city N. Y.) on or about 30 Sept., '65, $1,841 62

2. Charter-money; steamer "Metis," from Nov., 1865, to Jan. 16th, '66, at $2,400 a trip. No part paid. On or before Jan. 16, '66, (city N. Y.,) pl't advanced, paid, laid out & expended for d'f't $87 50

3 PHŒNIX INS. CO.
vs.
SAME.

For policy premiums, prior to February, 1866.
Attachment issued Apr. 17, '66.
Judgement entered May, '66, for..... $3,417 59

4 THEODORE W. HANDLEY
vs.
SAME.

For coal furnished by Mr. Boyce to the Kingfisher, Falcon, & Sea Gull, prior to March 1st, 1866.
Attachment issued April 20th, '66.
Judgement entered May 17th, '66, for..... $6,084 15

81 5. THE BALTIMORE & OHIO R. R. CO.
vs.
SAME.

Attachment issued Apr. 20th, '66..... $34,823 71
Judgment entered May 17th, '66.

$91,177 83

4 promissory notes, each $7,500; one protested in March 6, '66, and $4,449 05 money collected and received for freight, & collected between Nov. 16, '65, and March 6th; made on execution $10,470 63.
"No personal or real property in my co., belonging to within-named defendant out of which I could cause to be made the residue."

6 THE HARMONY FIRE INS. CO.
vs.
THE COMMERCIAL STEAMBOAT COMPANY.

Attachment issued May 4th, 66.
Judgement entered May 30th, '66, for..... $1,759 09
3 promissory notes, $551 25 each; $1,653 75 int. from 17 March, '66. Execution issued May 30th, '66.
"No personal or real property."

7 THE BALTIMORE & OHIO R. R. CO.
vs.
SAME.

Attachment issued May 11th, '66.
Judgement entered June 8th, '66, for..... $7,626 58
On on' of the notes secured by the mortgage. Execution June 22nd, '66. "No personal or real property."

8 WILLIAM H. DEAN
vs.
SAME.

Work, labor & services on vessel.
Attachment issued May 12th, '66, for..... $452 02

9 SAME
vs.
SAME.

Work, labor & services on vessel.
Attachment issued May 12th, '66, for..... $350 75

10 SAMUEL W. CHALMERS
vs.
SAME.

Attachment issued May 14th, 1866.
Judgement entered June 20th, 1866, for..... $149 93

$101,516 20

82 11 MERRITT, WALCOTT & Co.
vs.
STEAMER "KINGFISHER."

Work, labor and services on vessel.
Attachment issued May 2nd, '66, for..... $140 19

12 SAME
vs.
STEAMER "SEA GULL."

Work, labor and services on vessel.
Attachment issued May 2nd, '66, for..... $133 54

13 ZENO SECOR
vs.
STEAMER "FALCON."

Work, labor and services on vessel.
Attachment issued May 15th, '66..... 2,136 22

14 CORNELIUS H. DELAMATER
vs.
STEAMER "FALCON."

Work, labor and services on vessel.
Attachment issued May 22nd, '66..... $4,028 87

15 SAME
vs.
STEAMER "SEA GULL."

Same.
Attachment issued May 22nd, '66..... $206 30

16 CHARLES W. MERRITT
vs.
THE COM'L ST'B'T CO.

Attachment issued May 25th, '66..... 273 73

108,435 05

83 Forward $108,435 05

17 THE BALTIMORE & OHIO R. R. CO.
vs.
SAME.

Attachment issued May 25th, '66.
Judgement entered June 19th, '66, for..... 7,621 24
Promissory note 105 days after date; execution June 22nd, 1866.
"No personal or real property;" one of the notes secured by the mortgage.

18 THEODORE W. HANDLEY
vs.
SAME.

Work, labor & services on co.'s vessels prior to April 1st, 1866.
Attachment issued June 2nd, '66.
Judgement entered July 3rd, '66, for..... 648 57

19 MARINE NATIONAL BANK, CITY OF N. Y.,
vs.
SAME.

Attachment issued June 8th, 1866, for..... $10,000

20 PRESIDENT, &C., HUDSON & DELAWARE C. CO.
vs.
COM'L ST'B'T CO.

Attachment issued June 16th, '66..... 661 50

21 MERCANTILE M. INS. CO.
vs.
SAME.

Judgement entered July 25th, '66, for..... 2,556 29
3 notes, each $826 25; execution August 4th, '66; "no personal or real property." Protested in March, 1866.

129,922,65

84 1. Note dated Feb'y 3rd, 1866, (30 days,) payable to the order of John King, j'r, esq., auditor Balt. & Ohio R. R. Co., made by the Commercial St'b't Co., John R. Bacon, pres't, for $7,500 00.

Payable at the Marine National Bank of New York. Endorsed: Pay to J. J. Atkinson, treasurer, or order. John King, j'r, auditor. Protested for Dabney, Morgan & Co., New York, March 8th, 1866. E. Ketchum, notary.

2. Note dated Feb'y 3rd, 1866, (45 days,) payable to the order of John King, j'r, esq., auditor Balt. & Ohio R. R. Co., made by the Commercial St'b't Co., John R. Bacon, president, for $7,500 00.

Payable at the Marine Nat. Bank of New York. Endorsed: Pay J. J. Atkinson, treasurer, or order. John King, j'r, auditor. Endorsed: Pay Messrs. Dabney, Morgan & Co., or order. J. J. Atkinson. Protested for Dabney, Morgan & Co., New York, March 23rd, 1866. E. Ketchum, notary.

3. Note dated Feb'y 3rd, 1866, (60 days,) payable to the order of John King, j'r, auditor Balt. & Ohio R. R. Co., made by the Com'l St'b't Co., John R. Bacon, pres't, for $7,500 00

Payable at the Marine National Bank of New York.

85 4. Note dated Feb'y 3rd, 1866, (75 days,) payable to the order of John King, j'r, esq., auditor Balt. & Ohio R. R. Co., made by the Commercial St'b't Co., John R. Bacon, pres't, for $7,500 00.

Payable at the Marine National Bank of New York. Endorsed: Pay J. J. Atkinson, treasurer, or order. Endorsed: Pay Messrs. Dabney, Morgan & Co., or order. J. J. Atkinson, treasurer. John King, j'r, auditor. Protested for Dabney, Morgan Co., New York, April 23rd, 1866. E. Ketchum, notary.

5. Note dated Feb'y 3rd, 1866, (90 days,) payable to the order of John King, j'r, esq., auditor Balt. & Ohio R. R. Co., made by the Commercial St'b't Co., John R. Bacon, pres't, for $7,500 00.

Payable at the Marine National Bank of New York. Endorsed: Pay J. J. Atkinson, or order. John King, j'r, auditor. Endorsed: Pay Messrs. Dabney, Morgan & Co., or order. J. J. Atkinson, treasurer. Protested for Dabney, Morgan & Co., New York, May 7, 1866.

6. Note dated Feb'y 3rd, 1866, (105 days,) payable to the order of John King, j'r, auditor Balt. & Ohio R. R. Co., made by the Commercial St'b't Co., John R. Bacon, pres't, for $7,500 00.

Payable at the Marine Nat. Bank of New York. Endorsed: Pay J. J. Atkinson, treasurer, or order. John King, j'r, auditor. Endorsed: Pay Messrs. Dabney, Morgan & Co., or order. J. J. Atkinson, treasurer. Protested for Dabney, Morgan & Co., New York, May 22nd, 1866. E. Ketchum, notary.

86 WASHINGTON M. INS. CO.
vs.
SAME.

Judgement entered Aug. 21st, 1866, for $1,723 26
3 promissory notes for $551 25 each. Protested in March, 1866. Ex'd August 21st, 1866. "No personal or real property." $131,645 91

Above examined by me, personally, on files.
February 5th, 1867.

D. McMAHON.

Mr. Heath was shown this and made no objections.

(Indorsed:) List of attachments & judgements against Commercial Steamboat Co., in New York county clerk's office. This belongs to D. McMahon, 13 Chambers st.

87 NEW YORK, *April 27th*, 1866.

JAMES BOYCE, Esq., *Baltimore.*

DEAR SIR: Your claim on steamer Patapsco we have been apprised of, and, in answer, would say we also have a claim of $10,500, and shall probably defend the suit unless ours is satisfied.

If you wish to pay us our claim, we will give you B|L of the steamer, which will more than pay your demand. Trusting to hear from you at your earliest convenience, together hoping our proposition is not out of order, we are yours, &c.,

JA'S BORLAND & CO.

88 (Indorsed:) James Borland & Co. April 27th, 1866. Exhibit Y, Jan. 18, '67. A. T. W.

Enrollment of "Patapsco" read.

89 *Depositions read by claimants in trial of cause.*

1st deposition of David Mordecai, taken on the 2nd day of November, one thousand eight hundred and sixty-six, at Isaac Brooks j'r's office, in the city of Baltimore, in the district of Maryland, on the part of the claimant in this cause, before said Isaac Brooks, j'r, a United States commissioner.

The said DAVID MORDECAI, being duly sworn according to law, and being examined on behalf of the claimant, deposeth and saith as follows, to wit:

1. First interrogatory. State your name, age, residence, and occupation.

To the first interrogatory he saith: I am forty-seven years of age; my name, David Mordecai; I reside in Baltimore, and am a commission merchant.

2. Second interrogatory. State whether or not you knew the Commercial Steamboat Company, and if so, when that acquaintance began and when it ended.

To the second interrogatory he saith: My acquaintance with the agent of the Commercial S'tb't Co. commenced about a year ago, and it still

continues; my acquaintance with the company commenced with him, Mr. Blaisdell, the agent.

3. Third interrogatory. Do you or not know between what places this company ran their boats?

90 To the third interrogatory he saith: Their boats ran between Baltimore & New York, occasionally sending one to Charleston.—(ISAAC BROOKS, J'R, *U. S. C.*)

4. Fourth interrogatory. Did you or not ever have any dealings with that company; and if so, of what kind, and to what extent?

(Question objected to.)

To the 4th interrogatory he saith: I advertised one of their boats jointly with their agent for Charleston. I neither received nor did I ask for any compensation. I loaned their agent a couple of thousand dollars.

5. Fifth interrogatory. Who was their agent?

To the fifth interrogatory he saith: Mr. Samuel Blaisdell, jr., was their agent.

6. Sixth interrogatory. Do you or not know anything of the dealings of the said company in the city of Baltimore; and if so, were they or not large?

To the sixth interrogatory he saith: I know nothing from personal knowledge, except what I have already stated.

7. Seventh interrogatory. Do you or not know anything of its reputation for credit?

(Question and answer objected to.)

To the seventh interrogatory he saith: I would not have been induced to have loaned them two thousand dollars had I not have thought that they were good for that amount.

91 8th. Eighth interrogatory. State what was the said company's commercial standing in Baltimore, good or bad.

(Question and answer objected to.)

To the eighth interrogatory he saith: I knew nothing of their commercial standing, except as represented by their agent, Mr. Blaisdell, to me.—(ISAAC BROOKS, J'R, *U. S. C.*)

9. Ninth interrogatory. State all the circumstances under which you loaned the said two thousand dollars to the said company.

(Question & answer objected to.)

To the ninth interrogatory he saith: Mr. Blaisdell made an application to me to advise him how to raise funds for the company; that he was authorized by its president, John R. Bacon, to do so. I asked him the condition of his company. He told me that it was good, and in good condition. He then asked me to loan him a couple of thousand dollars for a few days for the use of said company, and which I did without charging him any compensation.

10. Tenth interrogatory. State when the said two thousand dollars were loaned as aforesaid.

To the tenth interrogatory he saith: As near as I can recollect it was on or about the 28th of March.

11th. Eleventh interrogatory. State whether or no you know anything of the value or condition of the stock of said company at that time.

To the eleventh interrogatory he saith: I had no personal knowledge of its value at that time.

92 12. Twelfth interrogatory. State what representations were made to you at the time of loaning said money to the said steam-

boat company, through its agent, Samuel Blaisdell, j'r, as to the value of said company's stock, and as to its commercial condition.

(Question and answer objected to.)

To the twelfth interrogatory he saith: He represented to me that the stock was good; that there was none of it on the market for sale, except what a particular friend of his had, which he wanted me to buy, and that the condition of the company was solvent and first rate.—(ISAAC BROOKS, J'R, *U. S. Comm'r.*)

Cross-examined:

1st cross-interrogatory. Did you ever get the money loaned to Mr. Blaisdell, back?

To the first cross-interrogatory he saith: Mr. Blaisdell never paid me anything of said amount, although he gave me a draft on the agent of the Commercial Steamboat Company, in New York, for the amount, which came back protested for non-acceptance and non-payment. Subsequently I levied an attachment on some coal alleged to have been furnished by Mr. Boyce, and other property on the wharf, in which suit, if I am successful, I shall get some five or six hundred dollars.

D. MORDECAI.

Subscribed & sworn to before me this 20th day of November, 1866.

ISAAC BROOKS, J'R,
U. S. Commissioner.

[U. S. int. rev. stamp, 5 c. cancelled.]

93 Deposition of Franklin J. Morton, taken on the twentieth day of November, one thousand eight hundred and sixty-six, at Isaac Brooks, j'r's, office in the city of Baltimore, within the district of Maryland, on the part of the claimant in this cause, before said Isaac Brooks, j'r, a United States commissioner.

The said FRANKLIN J. MORTON, having been duly sworn according to law, and being examined on behalf of the claimant, deposeth and saith as follows, to wit:

1. First interrogatory. State your name, age, occupation, & residence.—(ISAAC BROOKS, J'R, *U. S. Comm'r.*)

To the first interrogatory he saith: My name is Franklin J. Morton; I am thirty-two years old; I reside in Baltimore and am a commission merchant.

2. Second interrogatory. State the name of your firm.

To the second interrogatory he saith: A. B. Morton & Sons.

3. Third interrogatory: State whether you knew said Commercial Steamboat Company, spoken of before in this deposition; if so, when did your acquaintance begin and when it ended.

To the third interrogatory he saith: I became acquainted through its agent, Samuel Blaisdell, j'r, with the Commercial St. B't Co. about July, 1865.

94 4. Fourth interrogatory. Did you ever have any dealings with said company; if so, of what kind and to what extent?

(Question & answer objected to.)

To the fourth interrogatory he saith: A. B. Morton & Sons, our firm, had dealings with the company in the way of furnishing supplies; our firm being engaged, at that time, in the ship-chandlery, and grocery business. The majority of their supplies were obtained in New York; our transactions were quite large in the way of supplies.

5. Fifth interrogatory. When did your dealings with said company begin and when end?

(Question & answer objected to.)

To the fifth interrogatory he saith: I think they began about July, 1865. They went on up to the time the steamers were taken off.

6. Sixth interrogatory. Did you during said time and dealings, give the said company credit or not?—(ISAAC BROOKS, J'R, *U. S. C.*)

(Question and answer objected to.)

To the sixth interrogatory he saith: Our bills are made out against the steamers, except a small dock-bill of a hundred dollars or so.

7. Seventh interrogatory. What was the commercial standing of the said company in Baltimore for credit?

(Question & answer objected to.)

95 To the seventh interrogatory he saith: I should go back and state that the Neptune Steamboat Company was a wealthy company, of New York, the stockholders being wealthy men; and we were given to understand that the stockholders of one company were stockholders in the other, and were directors of it, thereby giving it a credit in our estimation which otherwise it would not have had.

8. Eighth interrogatory. What do you mean by the stockholders of one company being stockholders of the other?

(Question & answer objected to.)

To the eighth interrogatory he saith: I mean that the wealthy persons whom we were acquainted with as stockholders of the Neptune Steamship Company, took stock in the Commercial Steamboat Company.

9. Ninth interrogatory. From the general reputation and commercial standing of the said Commercial Steamboat Company in the said city of Baltimore, would you have given it, if applied to, credit for supplies?

(Question and answer objected to.)

To the ninth interrogatory he saith: We would; although we looked to the steamers for security for the bills that we did furnish.—(ISAAC BROOKS, J'R, *U. S. Commissioner.*)

96 Cross-examined:

1. First cross-interrogatory. Do I understand you to say that you thought that the responsibility of the Commercial Steamboat Company was improved by the fact that some parties who held the stock were wealthy.

To the first cross-interrogatory he saith: I do.

2. Second cross-interrogatory. Do you think there was any responsibility upon the individuals holding the stock for the transactions of the company?

(Question & answer excepted to.)

To the second cross-interrogatory he saith: We looked upon it in that light.

3. Third cross-interrogatory. Did your firm furnish any supplies to the Commercial Steamboat Company, except a small bill for dock-bill, without looking to the boats themselves, as security for the bills?

To the third cross-interrogatory he saith: No; we did not.

4. Fourth cross-interrogatory. What was the dock-bill you speak of?

To the fourth cross-interrogatory he saith: It was a bill for oil and lime and paints.

5. Fifth cross-interrogatory. When was it contracted?

97 To the fifth cross-interrogatory he saith: There were one or two bills of that kind. I should judge that the last bill contracted about March.

6. Sixth cross-interrogatory. Was that last bill paid?
To the sixth cross-interrogatory he saith: It was not.

FRANKLIN J. MORTON.

(ISAAC BROOKS, J'R, *U. S. C.*)

(The proctor for the libellant asks the following questions, to which the proctor for claimant objects on the ground that the deposition is closed, as evidenced by the signature of the witness' name above. The proctor for the libellant insisting that the signature of the witness does not close this said deposition.)

7. Seventh cross-interrogatory. Do you or not know by whom Blaisdell, agent of the Commercial St'b't Company, was introduced to libellant, James Boyce?

(Question & answer excepted to.)

To the seventh cross-interrogatory he saith: I do not know whether my brother introduced him or whether he went up himself and purchased.

8. Eighth cross-interrogatory. Do you or not know whether or not he, Blaisdell, was recommended by one of your firm to go to Mr. Boyce to purchase?

(Question & answer objected to.)

98 To the eighth cross-interrogatory he saith: I do not know that he was introduced there by our firm, but he, Blaisdell, knew that we had purchased our coal, as agents for the boats, of Mr. Boyce, before Mr. Blaisdell became the agent, and he, Blaisdell, knew that fact. I mean that we were agents of the Neptune Steamboat Company.

Re-direct:

1st. First redirect interrogatory. What company succeeded the Neptune Steamboat Company?

To the first redirect interrogatory he saith: The Commercial Steamboat Company.

2nd. Second redirect interrogatory. To whom was the coal which was furnished by Mr. Boyce to you, as the agent of the said company, charged?

(Question and answer excepted to.)

To the second redirect interrogatory he saith: The bills were made out against A. B. Morton & Sons, the headings of the bills, and it said on them "Coal delivered to such and such steamers."

F. J. MORTON.

Subscribed & sworn to before me this 20th day of November, 1866.

ISAAC BROOKS, J'R,
U. S. Commissioner.

99 Deposition of Patrick Rooney, taken on the twentieth day of November, one thousand eight hundred and sixty-six, at Isaac Brooks, j'r's, office, in the city of Baltimore, within the district of Maryland, on the part of the claimant in this cause, before said Isaac Brooks, j'r., a United States commissioner.

The said PATRICK ROONEY, being duly sworn according to law, and being examined on behalf of the claimant, deposeth and saith as follows, to wit:

1. 1st interrogatory. What is your name, age, residence, and occupation?

To the first interrogatory he saith: My name is Patrick Rooney; I am fifty-eight years of age; I reside in Baltimore; I am a wood dealer.

2. Second interrogatory. State whether you knew the said Commercial Steamboat Company; if so, when did your acquaintance begin, and when did it end?

To the second interrogatory he saith: I only knew them by Mr. Blaisdell, as agent. It began in July, 1865. I am not certain as to the time it ended. I think it was the latter part of April. (ISAAC BROOKS, J'R, *U. S. C.*)

100 3rd interrogatory. Did you ever have any dealings with said company during those periods; if so, what kind?

(Question and answer excepted to.)

3rd. To the third interrogatory he saith: I furnished their steamships with firewood.

4th interrogatory. Did you ever, during those periods, give the said company credit?

(Question and answer objected to.)

4th. To the fourth interrogatory he saith: Yes; I have given them credit.

5th interrogatory. What was his general reputation for credit in the city of Baltimore, namely, the said steamboat company?

5th. To the fifth interrogatory he saith: I had always considered it good up to the time of failure.

6th interrogatory. Do you or not know anything of its business, whether large or small?

6th. To the sixth interrogatory he saith: They appeared to do a large freighting business.

7th interrogatory. Was its reputation in this community that of a large company?

7th. To the seventh interrogatory he saith: I have understood it to be so.

PATRICK ROONEY.

Subscribed and sworn to before me this twentieth day of November, 1866.

ISAAC BROOKS, J'R,
U. S. Commissioner.

[U. S. int. rev. stamp, 5 c.]

Then adjourned to the 21st day of Novem'r, at 11 o'clock.

ISAAC BROOKS, J'R, *U. S. C.*

101 Deposition of John Furlong, taken on the 21st day of November, eighteen hundred & sixty-six, at Isaac Brooks, j'r, office, in the city of Baltimore, within the district of Maryland, on the part of the claimant in this cause, before said Isaac Brooks, j'r, a United States commissioner.

The said JOHN FURLONG, being duly sworn according to law, and being duly examined on behalf of the claimant, deposeth and saith as follows, to wit:

NOVEM'R 21ST.—Examination resumed.

1st. First interrogatory. State your name, age, residence, & occupation.

To the first interrogatory he saith: My name is John Furlong; I am

fifty-six years of age; I reside in Baltimore County; I am a book-keeper for James Boyce, the libellant in this cause; I have been such clerk for James Boyce for a month and upwards.

2nd. Second interrogatory. In opening an account for coal furnished a steamboat belonging to a company whose agent you know, how do you open that account—to the agent, the company, or the steamboat?

To the second interrogatory he saith: I should open that account to the steamboat and owners. When the agent is known to be responsible I would name him in a marginal bracket.

3rd. Third interrogatory. Have you, as such clerk, opened any account against any steamboat whose agent you know, for coals furnished by Mr. Boyce; if so, for what boat, and to what line does she belong, and who is the agent?

102 To the third interrogatory he saith: I have opened an account against the steamer "Adele," D. F. Keeling agent; the steamer "Fanny" & owners; the steamer "Balloon" and owners. I do not know their agents or the lines to which they belong, and I charge them in this way in order to hold the boats responsible.

4th. Fourth interrogatory. How does the account against the "Adele" read in your books?

To the fourth interrogatory he saith: Steamer "Adele," (D. F. Keeling, agent.)

(The libellant's proctor excepts to each and all of the interrogatories propounded to John Furlong, and the answers thereto.)

JOHN FURLONG.

Subscribed and sworn to before me this 21st day of Novem'r, 1866.

ISAAC BROOKS, J'R.
U. S. Commissioner.

(ISAAC BROOKS, J'R, *U. S. C.*)

[U. S. int. rev. stamp, 5 c., canc'l'd.]

103 United States district court. Before Hon. Judge Shipman. In admiralty. January 18, 1867.

JAMES BOYCE
vs.
THE PATAPSCO.

For libellant, D. & F. McMahon; for claimant, Mr. Heath.

INDEX.

Jacob B. Smull.
Counsel for libellant, read in evidence—
Deposition of John C. McGowan.
James Blaisdell.
John Coyne.

Also, exemplified copy of articles of incorporation of the Commercial Steamboat Company, granted [by the legislature of Rhode Island] June session, 1852; amended June session, 1864, June session, 1865, and May session, 1865, marked Ex. "X."

Also, deposition of John King, j'r.
" " " James F. Pendergast.
" three mortgages, dated Feb'y 6, 1866, each for $15,000.

Also, from the records of the county clerk's office, attachments against

the Commercial Steamboat Company, commencing April 10, 1866, and running on to August, 1866, (some for indebtedness as far back as September, 1865, amounting to over $100,000; admitted subject to
104 exception, an abstract of the contents to be agreed upon by counsel, and furnished to the court.)

Also, letter from James Borland to James Boyce, dated April 27, 1866, mark'd Ex. "Y."

Also, enrollment of the "Patapsco," dated November 4, 1865, in the name of John R. Bacon, marked Ex. "Z."

Libellants rest.

Counsel for claimants read in evidence deposition of David Mordecai.

Counsel for libellant objects to all declarations. (Admitted; exception.)

Deposition of Franklin J. Morton.
" " Patrick Rooney.
" " John Furlong.

JACOB M. SMULL, called by the claimants, being duly sworn, testified:

Q. What is your business?

A. I am a commission merchant at No. 13 Broadway, New York.

Q. And have been so how long?

A. Since first December last.

Q. Did you ever have anything to do with the Commercial Steamboat Company?

A. I was general agent for that company in New York.

Q. For how long?

A. From the first September, 1865, to the close of the company.

Q. What was the credit of the company up to the time of its stoppage?

(Libellant objects to the credit in New York. Admitted; exception.)

105 A. It was good up to the the attachment commenced.

Q. How was it as to being successful or unsuccessful in business?

A. I think the chances in regular course of business would have been even; not much lost or much gained.

Q. The trouble arose, not from losses in trade, but in other matters?

A. I cannot speculate on that.

Q. Do you know Mr. Pendergast?

A. Yes, sir.

Q. He testifies that he was at dinner with you, and you told him certain things in regard to the credit of the company. Did you ever give him any such information as he states?

A. No, sir.

Q. Did you know of any negotiation or application to him for funds?

A. It may have been made by the president or treasurer.

Q. Do you know of any?

A. No, sir.

Q. Did you ever say anything to him, or know anything at the time you had the *the* talk with him, showing a want of credit on the part of the company?

A. At the time we had the talk, there was nothing said in regard to the finances of the company. They were arranging for a coastwise line of steamers.

Q. Where had you any talk with him?

A. Mr. Pendergast came to my office that day, and was talking over this new line. It approached dinner hour, and he showing no signs of going, I asked him to dinner. When I reached the table, I
106 thought he was under the influence of liquor. We had part of a bottle of sherry together, and before dinner was over he showed signs of intoxication.

Q. Did you tell him, or did you state to him, that the president of the company was under protest for his own as well as the compan*ie*'s liabilities, then?

A. No, sir.

Q. Are you acquainted with person' who know Mr. Pendergast?

A. Not in New York.

Q. Are you in Baltimore?

A. Yes, sir.

Q. What, with them, is his general character for truth and veracity?

A. Not good, sir.

Cross-examined by Mr. McMahon:

Q. When did you understand the company to fail?

A. That is a hard question to answer. I was given to understand—(Objected to.)

Q. When did you know of any of its paper to go to protest?

A. I did not keep the bill-book, and cannot tell. All I learned was communicated to me by the treasurer.

Q. When was that?

A. That was along in April or May, I do not know which.

Q. Before the attachment was issued, or after?

A. After.

Q. What did you learn from the treasurer then?

(Objected to as after the time the credit was given. Admitted. Claimant excepts.)

A. I learned he was hard up for money; was in want of money?

Q. That the company was in want of money?

A. Yes, sir.

Q. Did he say how much hard up?

A. No, sir.

107 Q. How much was the capital stock of the company?

A. That I cannot tell. Mr. Bacon gave me to understand, when I joined there, that the capital stock was $350,000.

Q. What was the property of the company?

A. The property consisted of three steamships—the "Kingfisher," the "Sea Gull," and "Falcon;" of sheds on the dock; and three hoisting steam engines on the dock.

Q. Was that all they had?

A. Regular dock furniture and office furniture.

Q. To what amount?

A. I suppose $25,000 would cover the whole—sheds, dock furniture, engine, and office furniture.

Q. Do you know when the company was sold out?

A. Yes, sir; the 30th June, 1866.

Q. Do you know that all the property did not bring enough to pay the judgments and assessments?

A. I ascertained that afterwards.

Q. Do you know that it did not bring enough to pay one-half of the judgments and executions against it?

A. That I cannot say, sir. I never ascertained what the liabilities of the company were.

Q. Did it ever pay a dollar, in your recollection, in the shape of dividends or on account of any principal of the stock?

A. I know of none, to my knowledge. That is a question for the president.

Q. Have you ever heard of any?

A. No, sir; I never heard of any.

Q. Your hearsay extends back to September, 1865?

A. Yes, sir.

Q. Did you hear, in February, that the company was borrowing money in Wall street?

108 A. No, sir. I can say that very safely. My office was on the dock, and I was out of the circles of monied men.

Q. You had nothing to do with the finances of the company?

A. Nothing whatever.

Q. Did the company owe you anything?

A. It did.

Q. How much did it owe you?

A. It owed me a contract for five years. I cannot say how much.

Q. How much salary did they owe you up to the time the concern burst up?

A. I should judge they owed me $1,000.

Q. Salary for how long?

A. My salary commenced on the 1st September, and the board of directors never annulled my contract. So, after the breaking up of the company, I wrote to them to the effect that I would still hold myself bound as agent for the company.

C. Did they pay your salary up to the time of its failure?

A. No, sir.

Q. How much did they owe you?

A. About $1,000.

Q. Do they not owe you your salary for February & March?

A. My salary was not paid monthly, but so much a year, and I drew on account.

Q. Your salary was how much?

A. Five thousand a year.

Q. You received how much?

A. I cannot tell. I had drawn large amounts and small amounts, as it might be, and I took the treasurer's statement.

Q. There was $1,000 due you on your salary up to the time of the failure?

109 A. To the best of my knowledge.

Q. And the time of the failure was in April?

A. I believe so.

Q. Do you not know or have you not heard that the company, in February, was largely indebted to the Neptune Steamship Company, to the Phœnix Fire Insurance Company, and to other companies and persons, for borrowed money and services?

(Objected to.)

A. The only knowledge I had of it was the writs of attachment which was served on the captains, and the captains referred them to me, from the Neptune Steamship Company and the Phœnix Fire Insurance Company. Other liabilities I knew nothing about.

Q. Had you heard, prior to the service of the attachment on the 10th

April, that the company was indebted to other companies or to individuals to a large amount?

A. I cannot say Yes or No to that. I will have to explain. I knew there were some money transactions between the Neptune Company and the Commercial S. S. Company from the fact that I wanted a steamer to go down to Baltimore, and I went to charter one from the Neptune Company. There was an understanding between the Neptune
110 Company and our company that if I wanted to borrow or hire one I could do so, subject to the president's arrangement with them. As near as I can recollect, I wanted such a steamer, and was given to understand that the Commercial Steamship Co. owed them money enough.

Q. When was that said?

A. I do not know. It must have been along in February, about the time the attachment was served. It was about the time of the attachment.

Q. If I understand you, you had nothing to do with the financial affairs of the company.

A. None in the least, sir.

Q. Nor did you, in any way, go into Wall street and investigate its affairs and credits.

A. No, sir; I had not power to borrow money or loan it.

Q. Nor did you, in any way, discuss it in the months of February and March, 1866.

A. I may have had some conversation with the treasurer about it, but it would come in the regular course. He would come over to my office, and I to his.

Q. You may have talked with him in February and March about the state of the company?

A. He may have mentioned that he was in want of money, but it was in a general sort of way.

Q. Did he not state so to you when you applied for money on account of your salary?

A. The money for receipt of freight passed through my hands;
111 that is, I collected all money for freight, and passed it over to him, and took his receipt for it. That is the only thing I had to do with the finances of the company. If I wanted any money I would draw it out of that, and give him my receipt for the amount.

Q. He would object to that, on the ground that the company wanted money?

A. No, sir.

Q. How would he express himself that the company wanted money?

A. I almost always drew my money that way; took it out of what was in my hands, and gave him a memorandum of how much I drew, which went to his hands as cash.

Q. Did all the officers do it?

A. No, sir; all the clerks in my office were paid by the treasurer.

Q. What made you take it out of the freights?

A. Because it was most convenient, and it passed as cash.

Q. How long have you known Mr. Pendergast?

A. I have known him off and on ever since I have been a boy.

Q. How many years?

A. I suppose I have known him ten years.

Q. Was he a merchant in this city?

A. When I first knew him he was a merchant in Baltimore, and afterward moved here.

Q. Is he a merchant here now?

112 A. Yes, sir.

Q. What was the nature of your acquaintance with him?

A. Nothing more than a speaking acquaintance.

Q. Had you any business transactions with him?

A. Never, more than this—that I chartered a couple of boats down to Baltimore for him; he put a couple of steamers in my hands to load for Baltimore.

Q. Then he was a man of property?

A. He had that reputation.

Q. Is he a man of property now?

A. I cannot say; I never knew what he owned; he said he owned such and such.

Q. His reputation was that he was a man of property?

A. That I do not know.

Q. Who have you ever heard speak of his character?

A. I heard that his father said he would not believe him.

Q. What did you hear him say?

A. That he would not believe him.

Q. Did his own father say that he would not believe him under oath?

A. I would not say that.

Q. What was his father speaking about?

A. I do not know what induced the thing. I heard that was Pendergast's reputation; that he was liable to magnify things.

Q. What was his father saying?

A. I cannot say; that remark I heard on the street, in Baltimore.

113 Q. His father did not speak that to you?

A. No, sir.

Q. Who told you his father said so?

A. My father told me.

Q. Your father told you that his father told him that he would not believe his son?

A. Yes, sir.

Q. That is the way you have it?

A. Yes, sir.

Q. Is that all you ever heard spoken of his character?

A. I have heard Mr. Blaisdell, the agent of the company at Baltimore, say he would not believe him.

Q. Did he tell you that?

A. Yes, sir.

Q. What was he speaking about?

A. I cannot tell at this *at this* moment. I cannot remember the particular circumstance.

Q. Who else have you heard speak of his character?

A. That is all I heard.

Q. How long has Mr. Pendergast been in business in Baltimore?

A. That I cannot answer, because he was in business before my recollection.

Q. He has been in business for over ten years?

A. Yes, sir; the war was some interruption to his business.

A. He is now in business here?

A. He had a house there, and I suppose has now, in connection with his New York house.

114 Q. What was the name of the house?

A. In New York? Pendergast, Bro's & Co.

Q. What was it then?

A. Pendergast, Fenwick & Co.

Q. His connection with these houses has existed ever since you have known him?

A. No, sir; only since the close of the war the New York house has been established.

Q. And the other house prior to and since the war?

A. Prior to the war, I think it was James L. Pendergast.

Q. And since the war he has been in these two houses?

A. Yes. sir.

Q. Have you ever heard his character discussed in any place, or questioned, other than what you have now stated?

A. No, sir; I do not think I have.

Q. This interview you had—where did it take place?

A. We dined at the Traveller's Club, corner of Fifth avenue and 14th street.

Q. Before your dinner, how long an interview had you with Mr. Pendergast?

A. I should judge, half an hour.

Q. Where?

A. At my office, pier 11, North River, the dock-office of the company; the treasurer's office was 80 West street.

Q. Your interview there was about what?

115 A. He had two steamers that he wanted to sell; and to sell them, it was necessary to put them into a company. He wanted to fuse them with ours, and to make a joint-stock company with a line of steamers to run between New York and Baltimore, and Baltimore and Charleston and Savannah, covering that whole line, and with our three steamers and the Patapsco, and the steamers of his, we could have done it. He came to discuss it as a matter of form. I had not the power to make any arrangement. The matter was referred to the president of the company.

Q. You had an interview of half an hour at your office, and then adjourned up to dinner?

A. Yes, sir.

Q. Did you not, in some part of the interview, tell Mr. Pendergast that the company was short of money?

A. To the best of my recollection I did not.

Q. Do you mean to state positively, as a witness, that you did not?

A. I do not see what right I had to say it.

Q. I want to know whether you did say it or not?

A. To the best of my knowledge, I did not.

Q. Can you say positively that you did not so state to him?

A. I cannot state positively.

Q. Can you say positively that you did not in that interview state that the company's or Mr. Bacon's acceptances had gone to protest in Wall st?

A. I can state positively I did not.

116 Q. Can you state all that took place between you in that interview of half an hour?

A. No, sir; it had gone out of my recollection until refreshed by that affidavit; but, when I came to think of the circumstances, it was the only time I ever dined with Mr. Pendergast.

Q. You examined this affidavit before you went on the stand?

A. I heard it read. I then read it myself.

Q. If you had not read the affidavit would you have had any recollection whatever of dining with him?

A. I had a recollection when I heard the affidavit read by you.

Q. Laying aside that affidavit, and supposing you had not heard it read at all, would you have recollected the fact that you had an interview with Mr. Pendergast, and took dinner with him, and drank part of a bottle of sherry?

A. If it was put that way, I would, because it was the only meal I ever had with him.

Q. Suppose nothing was said about dinner, would you have recollected the fact of having had any conversation with him about the affairs of the company, or about anything?

A. I do not think I would.

117 Q. Is your notion of not having had such a conversation based somewhat upon the idea that it was not your business to meddle with the financial affairs of the company, and therefore you could not have made use of such language?

A. I think that is so; it was not my business; my business was simply to manage the ships.

Q. Have not the affairs of the company turned out so disastrously that not one dollar will be realized by the stockholders by way of dividends?

(Objected to, taken subject to objection.)

A. I do not think it will ever realize anything.

Re-direct:

Q. Up to the time this attachment was served you never had any difficulty in getting ships from the Neptune Company?

A. No, sir; it did not come within my province to know anything but the tangible property of the company around the dock. I could not tell whether they had money elsewhere or not.

Adjourned to 11 o'clock on Wednesday next.

118

119 REUBEN D. NICHOLS, called by the claimants, being duly sworn, testified:

Q. What is your business?

A. Ship-chandlers and grocery business, 53 South st., New York.

Q. How long have you been in business there, altogether?

A. As clerk and partner about twelve years in the same place; eleven or twelve.

Q. Did you know the Commercial S'tb't Co?

A. I did.

Q. Did you ever have any dealings with the company?

A. I did.

Q. When?

A. It commenced, I think, in April, 1865, and continued through to the last of March or 1st of April, 1866, about a year, inclusive.

Q. Did you have dealings with them in February or March, 1866?

A. Yes, sir; up to the last of March or 1st of April.

Q. Did you know their commercial standing?

A. I considered them perfectly good, and was glad to sell them any amount of goods they ordered, and I solicited the trade of the company.

120 Cross-examined by Mr. McMahon:

Q. Did they owe you anything when they failed?

A. Very little.

Q. How much?

A. I think about 82 dollars or 83 dollars; the company itself did not owe me money; it was the captain of one of the boats; the last month of their doing business there was a different arrangement.

Q. How came you to solicit their trade in February and March, 1866, if you had been doing their trade previously?

A. I did not solicit it then; I had no occasion; I solicited it originally.

Q. You did not solicit it in February or March, 1866?

A. No, sir; I had no occasion to.

Q. Were your dealings with them cash?

A. Yes, sir; thirty days we call cash.

Q. At the end of each month you rendered your bill?

A. At the end of each month we had our bill settled; I will not be certain that they were paid promptly at the end of each month, but there was no difficulty at all in getting the bills.

121 Q. Your trade was confined to the city of New York?

A. Entirely.

Q. Nothing to do with them in Baltimore?

A. Nothing.

JOHN R. BACON, called by the claimants, being duly sworn, testified:

Q. What was your business in February and March, 1866, and prior thereto?

A. I have been a commission merchant for several years in New York.

Q. Were you connected with this company?

A. I was president of the company.

Q. What was its standing and credit in February and March, 1866?

A. Perfectly good; I never knew any difficulty.

Q. As officer of the company, did you ever have any difficulty in getting credit in Baltimore for anything you wanted?

A. I did not.

Q. Did you know of any one refusing to give credit?

A. I did not.

Q. Did you know the firm of Mortons there, by reputation?

A. Yes, sir.

122 Q. Did you have a collision case of Leary and the Sea Gull?

A. We did.

Q. And one of the Mortons signed a bond for $20,000?

(Objected to. Admitted subject to objection.)

A. He did; he was one of the bondsmen for the Commercial S't'bt. Co.

Q. When did Morton become bondsman?

A. I think in 1865.

Cross-examined:

Q. Were you not in want of money in February & March, 1866, to carry on the company's operations?

A. Yes, we were sometimes in want of money.

Q. Did you make application to people for loans of money on your stock during those months, or prior thereto?

(Claimants object to this line of testimony. Admitted, subject to objection. Exception.)

A. I did—prior thereto.

Q. What time prior?

A. Probably in February, & prior to February.

Q. What was the arrangement you had with the Baltimore & Ohio R. R. Co. as to freights?

A. We had a connection with the Baltimore & Ohio R. R. Co.;
123 delivered their freight at New York; we collected freights at this end.

Q. Were you able to repay those freights in the month of February, 1866?

A. We were not able to repay them in January—some of them; we gave them a mortgage on the vessels of the company.

Q. Were you yourself in Baltimore about that time?

A. No, sir; I do not think I was in Baltimore in 1866 at all; I may have been, but I do not remember to have been.

Q. You did not yourself in Baltimore make any application personally to individuals to test the credit of the company?

A. In Baltimore—never.

Q. When did you understand your company to have failed?

A. I think we stopped running in April, 1866.

Q. And you were sold out in June, 1866?

A. I think we were.

Q. Did the sale bring enough to pay one-half your indebtedness?

(Objected to. Excluded. Exception.)

Q. Did you not owe your employees for two months' salary at the time you failed?

(Objected to. Admitted. Exception.)

124 A. I cannot say, of my own knowledge, whether they did or not.

Q. Were you paid up your own salary?

A. No, sir; I did not have any salary.

Q. Was a dollar of principal or dividend ever paid on the company's stock since the 1st of January, 1866?

(Objected to. Admitted. Exception.)

A. No, sir.

Redirect:

Q. This vessel belonged to you at the time she ran on these trips?

A. Yes, sir.

Q. Was it a written charter of the company or a verbal one?

A. A verbal charter.

Q. Had you any security beyond a verbal charter?

A. No, sir.

Claimants put in evidence bill of sale of this vessel to James A. *Borden*, dated April 2nd, 1866, recorded in the custom-house, April 4th, 1866.

All imputations as to the character of the witness Pendergast are stricken out, on motion of claimants' counsel.

S. int. rev. stamp, $5.] [U. S. int. rev. stamp, $5.] [U. S. int, rev. stamp, $5.]

whom these presents shall come, greeting:

ye, that I, John R. Bacon, of the city, county, and State of
rk, sole owner of the steamer or vessel called the Patapsco, of
rk, of the burthen of tons or thereabouts, for and in con-
n of the sum of fifteen thousand dollars, lawful money of the United States of America, to me in hand paid before the ensealing and delivery of these presents, by James A. Borland, of same place, the receipt whereof I do hereby acknowledge and am therewith fully satisfied, contented and paid; have bargained and sold, and by these presents

do bargain and sell unto the said James A. Borland, his executors, administrators, and assigns, the whole of the said steamer or vessel, together with all and singular the mast, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appertaining and belonging.

The certificate of the registry of which said steamer or vessel is as follows, to wit:

126 No. 68.] *Enrollment.—Permanent.*

Enrollment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18th, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6th, 1864.

John R. Bacon, of New York, State of New York, having taken or subscribed the oath required by the said act, and having sworn that he is a citizen of the United States and sole owner of the ship or vessel called the "Patapsco," of New York, whereof
is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at Philadelphia, State of Pennsylvania, in the year one thousand eight hundred and sixty-three, as per enrollment No. 378, issued at this port, November 4th, 1865, now cancelled property changed in part. And said enroll-
127 ment having certified that said ship or vessel has three decks and two masts, and that her length is 157 feet tenths, her breadth 24 tenths, her depth 19 tenths, and that she measures four hundred and fifty-seven 85 hundredths, viz:

	Tons.	1-100.
Capacity under tonnage deck	442	46
Capacity between decks above tonnage deck	442	45
Capacity of enclosures on upper deck, viz: two deck-houses	15	45
Total tonnage		

That she is a round-sterned steamer, has a round stack and no head; and that the said Bacon having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said St'b't has been duly enrolled at the port of New York.

Given under our hands and seals of office, this 2nd day of
[L. S.] April, in the year one thousand eight hundred and sixty-six.

128 To have and to hold the said steamer Patapsco, and appurtenances thereunto belonging, unto him, the said James A. Borland, his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof him, the said James A. Borland, and his executors, administrators, and assigns forever. And I, the said John R. Bacon, have, and by these presents do, promise, covenant, and agree for myself, my heirs, executors, and administrators, to and with the said James A. Borland, his heirs, executors, administrators, and assigns, to warrant and defend the said and all the other before-mentioned appurtenances against all and every person and persons whomsoever. In testimony whereof I, the said John R. Bacon, have hereunto set my hand

Q. What was the arrangement you had with the Baltimore & Ohio R. R. Co. as to freights?

A. We had a connection with the Baltimore & Ohio R. R. Co.;
123 delivered their freight at New York; we collected freights at this end.

Q. Were you able to repay those freights in the month of February, 1866?

A. We were not able to repay them in January—some of them; we gave them a mortgage on the vessels of the company.

Q. Were you yourself in Baltimore about that time?

A. No, sir; I do not think I was in Baltimore in 1866 at all; I may have been, but I do not remember to have been.

Q. You did not yourself in Baltimore make any application personally to individuals to test the credit of the company?

A. In Baltimore—never.

Q. When did you understand your company to have failed?

A. I think we stopped running in April, 1866.

Q. And you were sold out in June, 1866?

A. I think we were.

Q. Did the sale bring enough to pay one-half your indebtedness?

(Objected to. Excluded. Exception.)

Q. Did you not owe your employees for two months' salary at the time you failed?

(Objected to. Admitted. Exception.)

124 A. I cannot say, of my own knowledge, whether they did or not.

Q. Were you paid up your own salary?

A. No, sir; I did not have any salary.

Q. Was a dollar of principal or dividend ever paid on the company's stock since the 1st of January, 1866?

(Objected to. Admitted. Exception.)

A. No, sir.

Redirect:

Q. This vessel belonged to you at the time she ran on these trips?

A. Yes, sir.

Q. Was it a written charter of the company or a verbal one?

A. A verbal charter.

Q. Had you any security beyond a verbal charter?

A. No, sir.

Claimants put in evidence bill of sale of this vessel to James A. *Borden*, dated April 2nd, 1866, recorded in the custom-house, April 4th, 1866.

All imputations as to the character of the witness Pendergast are stricken out, on motion of claimants' counsel.

125 [U. S. int. rev. stamp, $5.] [U. S. int. rev. stamp, $5.] [U. S. int, rev. stamp, $5.]

To all to whom these presents shall come, greeting:

Know ye, that I, John R. Bacon, of the city, county, and State of New York, sole owner of the steamer or vessel called the Patapsco, of New York, of the burthen of tons or thereabouts, for and in consideration of the sum of fifteen thousand dollars, lawful money of the United States of America, to me in hand paid before the ensealing and delivery of these presents, by James A. Borland, of same place, the receipt whereof I do hereby acknowledge and am therewith fully satisfied, contented and paid; have bargained and sold, and by these presents

do bargain and sell unto the said James A. Borland, his executors, administrators, and assigns, the whole of the said steamer or vessel, together with all and singular the mast, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appertaining and belonging.

The certificate of the registry of which said steamer or vessel is as follows, to wit:

126 No. 68.] *Enrollment.—Permanent.*

Enrollment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18th, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6th, 1864.

John R. Bacon, of New York, State of New York, having taken or subscribed the oath required by the said act, and having sworn that he is a citizen of the United States and sole owner of the ship or vessel called the "Patapsco," of New York, whereof
is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at Philadelphia, State of Pennsylvania, in the year one thousand eight hundred and sixty-three, as per enrollment No. 378, issued at this port, November 4th, 1865, now cancelled property changed in part. And said enroll-
127 ment having certified that said ship or vessel has three decks and two masts, and that her length is 157 feet tenths, her breadth 24 tenths, her depth 19 tenths, and that she measures four hundred and fifty-seven 85 hundredths, viz:

	Tons.	1-100.
Capacity under tonnage deck	442	46
Capacity between decks above tonnage deck	442	45
Capacity of enclosures on upper deck, viz: two deck-houses	15	45
Total tonnage		

That she is a round-sterned steamer, has a round stack and no head; and that the said Bacon having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said St'b't has been duly enrolled at the port of New York.

Given under our hands and seals of office, this 2nd day of
[L. S.] April, in the year one thousand eight hundred and sixty-six.

128 To have and to hold the said steamer Patapsco, and appurtenances thereunto belonging, unto him, the said James A. Borland, his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof him, the said James A. Borland, and his executors, administrators, and assigns forever. And I, the said John R. Bacon, have, and by these presents do, promise, covenant, and agree for myself, my heirs, executors, and administrators, to and with the said James A. Borland, his heirs, executors, administrators, and assigns, to warrant and defend the said and all the other before-mentioned appurtenances against all and every person and persons whomsoever. In testimony whereof I, the said John R. Bacon, have hereunto set my hand

and seal this 2nd day of April, in the year of our Lord one thousand eight hundred and sixty-six.

JOHN R. BACON. [L. S.]

Sealed & delivered in the presence of—
RICHARD J. GODWIN.

129 UNITED STATES OF AMERICA,
City and County of New York:

Be it known that, on the 2nd day of April, one thousand eight hundred and sixty-six, before me, Richard J. Godwin, a public notary in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, personally came John R. Bacon, to me known to be the individual described in and who executed the above bill of sale and acknowledged that he executed the same.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office, the day and year last above written.

[L. S.] RICHARD J. GODWIN,
Notary Public.

130 (Indorsed:) Bill of sale st'ship Patapsco, dated , 18 .
John R. Bacon to James A. Borland.

CUSTOM-HOUSE, *April 4th*, 1866.

Received for record at 2½ p. m., and recorded in book No. 57; No. 312 register of sales & transfer.

L. WYMAN, J'R,
Register.
U. MUNKER,
D. Collector.

131 In admiralty. U. S. district court, S. D. of New York.

Deposition of Conyers.

JAMES BOYCE
ag't
STEAMSHIP PATAPSCO.

Examination of Charles M. Conyer, taken February 1st, 1867, by consent.

I reside in New York. My business is cashier of the National Steam Navigation Company. My employment in February and March, 1866, was cashier of the Commercial Steamboat Company at Baltimore; was such from August, 1865, to May, 1866.

Q. Do you know the commercial standing of the Commercial St'b't Co. of Baltimore, financially, in February and March, 1866?

(Objected to, and taken subject to objection.)

A. So far as I know, the commercial standing, financially, was very good in those months; had no trouble at that time with creditors. I disbursed, while I was cashier for that company at Baltimore, about $100,000. I resided at Baltimore all the time. The bills for supplies for those boats were paid in cash generally once a month.

132 Q. When you made payments for supplies delivered to the boats, such as coals, were these payments made generally for all the boats of the company?

(Objected to.)

A. They were.

Q. *To* whom were the bills that you paid on account of the company made out against?

(Objected to, and taken subject to objection.)

A. Against the company.

Q. Against whom were the bills of Mr. Boyce made out?

(Objected to, unless bills are produced or accounted for.)

A. Against the Commercial St'b't Co.

Cross-examination:

Q. Were your duties in Baltimore outdoor or indoor duties?

A. Indoor.

Q. Had you anything to do with the raising of funds outside the office?

A. No, sir.

Q. Your office, then, was purely clerical, taking care of the finances of the company?

A. Yes, sir. Check and pay the bills was my duty.

133 Where were the funds procured that enabled you to check and pay the bills?

A. From the freights from New-York.

Q. Freights on merchandize carried to New York?

A. No, sir; freights on merchandize carried from New York to Baltimore.

Q. Were those the freights that you had in connection with the Baltimore and Ohio R. R. Co.?

A. No, sir; they were not. They were freights for Baltimore—for the merchants there; nothing to do with the Baltimore and Ohio Railroad.

Q. Do you know from memory, apart from your books, the state of accounts of the company in February and March, 1866, with any of its customers?

A. No, sir. I don't remember any.

Q. Do you know from memory how much funds the company had on hand at Baltimore in the beginning of February, 1866?

A. No.

Q. Could you give us any idea as to the amount they had on hand at that time; that is, beginning of February, 1866?

134 A. No, sir; I do not remember at all. I have not the slightest recollection.

Q. Do you make the same answers to the same questions put to you about the month of March, 1866?

A. Yes, sir; I do.

Q. Were all the supplies for the boats there bought for cash?

A. Yes, sir; they were all bought for cash.

Q. How soon after the purchase were they paid?

A. Once a month, as I said before.

Q. At what time in the month?

A. About the first of the month. They were presented at the last of one month, and paid at the beginning of another.

Q. Had you any knowledge of the financial condition of that company in February and March, 1866, apart from the mere act of checking and paying its bills?

A. No, sir; I had not. I knew we had money enough at Baltimore; I knew at that time the amount, but I don't know it now.

Q. Question repeated.

A. No, sir. At the beginning of my last answer I said, No, sir.

135 Q. Did you ever purchase any supplies for that company in February and March, '66?

A. Well, I gave the orders for supplies in the name of Mr. Blaisdell.

Q. Was your act of purchase, then, merely confined to signing orders for supplies in Mr. Blaisdell's name, or did you personally negotiate with different material men for the supplies required?

A. Only the signing of orders.

Q. Did you go out of your office for the purpose of seeing whether the ships of the company in fact required the needed supplies or not?

A. I did not.

Q. How many ships were there running in the lines of the company at Baltimore, and gives us their names—I mean in Feb'y and March, 1866?

A. Four steamers regularly: the "Falcon," "Sea Gull," "Kingfisher," & "Patapsco."

Q. Were these steamships controlled by the company at that time?

A. Yes, sir; I believe they were.

Q. Who was the agent of the company in Baltimore who attended to the business of those steamships and of the lines?

A. Samuel Blaisdell, j'r.

136 Q. Did you purchase all of your supplies for those steamships in Baltimore?

A. No, sir; not all. Some were purchased in New York.

Q. Mr. Boyce's February bill for coal furnished the steamships of your company, and rendered about the last of February, was unpaid in March. State how that happened.

A. I don't remember.

Q. Was it the invariable custom of the Co. to pay their bills of the previous month in the following month when they had funds on hand?

A. That was the custom in Baltimore.

Q. How much per month did those supplies, furnished to those steamships and purchased in Baltimore, amount to?

A. About $11 & $12,000 a month.

Q. Did you get your salary?

A. I got my salary to the end of April.

Q. When did you understand the company to fail?

A. About the last of April.

Q. Do you know how much money was borrowed by Blaisdell, in Baltimore, January and February and March, 1866, for the company?

137 A. No, sir; I don't remember.

Q. Was any borrowed?

A. I think there was some from Mordecai & Co., but don't know in what money.

Q. Is your recollection of dates and amounts and how the company stood financially on or during any particular time at all definite or particular without reference to books.

A. Yes.

Q. Give us then the amount of money you had on hand the first week of February, 1866; be particular.

(Objected to, and taken subject to objection.)

A. I can't remember the amount of money.

Q. Then do I understand you to mean you cannot give definitely any particulars as to the money on hand with the co., from memory alone?

A. I don't remember the amounts.

Q. State how often the boats of your co. made their trips between New York and Baltimore.

A. Three times a week.

Q. How often did the Patapsco run, how many times a month.

A. About three times a month.

Q. Did she receive supplies of coal every time she came in Baltimore?

138 A. I don't remember whether she received coal every trip or not.

Q. You have stated, in your cross-examination, that you signed orders for supplies for the boats at Baltimore, in the name of Mr. Blaisdell; now look at the paper shown you, dated the 26th of January, 1866, and say whether that is one of the orders?

A. Yes, sir; that is one of them, drawn and signed by me.

(Order annexed to deposition and marked No. 1 A., A. J. H., D. Mc. M.)

CHARLES M. CONYERS.

Sworn to before me this 12th day of February, 1867.

A. C. WILLMARTH,
Notary Public.

139 No. 1 A., A. J. H., D. McM.

OFFICE COMMERCIAL STEAMBOAT COMPANY,
FLANNIGAN'S WHARF, *Baltimore*, 26 *Jan'y*, 1866.

MR. JAMES BOYCE:

Please deliver to steamship Patapsco, with invoice, the following articles: 40 tons soft coal, to be delivered alongside to-night or to-morrow morning.

Yours, S. BLAISDELL J'R, *Ag't.*
per CONYERS.

Above deposition taken by order of the court and sworn to by consent before a notary public.

D. MCMAHON,
Of Counsel for Libellants.
A. J. HEATH,
Claimant's Proctor.

140 At a stated term of the district court of the United States for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 18th day of July, in the year of our Lord one thousand eight hundred and sixty-seven—

Present, the Honorable W'm D. Shipman, district judge.

JAMES BOYCE
vs.
THE STEAMER "PATAPSCO," HER TACKLE, &C.

This case having been heard on the pleadings and proofs, and agreed and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libel filed in this action be, and the same is hereby, dismissed with costs to be taxed against the

libellant; and it is further ordered that, unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, that the stipulations for libellant's costs
141 pay into the registry of the court the amount of the stipulation, and that the clerk distribute the proceeds in satisfaction of the taxed costs.

(Signed) W'M D. SHIPMAN, *Judge.*

A true copy of the original on file.

GEO. F. BETTS, *Clerk.*

(Indorsed:) James Boyce ag't Steamer Patapsco, &c. Copy of certified copy of decree.

142

143 In admiralty. District court of the United States, S. D. of New York.

JAMES BOYCE, APPELLANT,
vs.
THE STEAMER PATAPSCO, BORLAND, CLAIMANT, respondent.

GENTLEMEN: Please to take notice that James Boyce, the above-named libellant and appellant, hereby appeals to the circuit court of the United States within and for the southern district of New York, from the decree dismissing his libel against the steamer Patapsco with costs.

New York, July 26th, 1867.

Yours, &c.,

D. & T. MCMAHON,
Proctors Libellant & Appellant.

To A. J. HEATH, Esq.,
Proctor for Claimant.

GEO. F. BETTS, Esq.,
Clerk of said district court.

144 (Indorsed:) U. S. dist. c't. James Boyce vs. The St'b't "Patapsco." Notice of appeal.

145 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

JAMES BOYCE, LIBELLANT, APPELLANT,
vs.
THE STEAMER PATAPSCO, HER TACKLE, &C., James A. Borland, claimant, appellee.

Know all men by these presents that we, James Boyce, Luther R. March, & Dennis McMahon, are held and firmly bound unto the above-named claimant and appellee, in the sum of two hundred and fifty dollars, to be paid to the said claimant; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by

these presents, sealed with our seals, and dated the third day of August, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas the above-named libellant hath prosecuted an appeal to the circuit court of the United States for the southern district of New York in the second circuit, to reverse the decree rendered in the above-entitled suit, by the judge presiding in the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named libellant shall prosecute his appeal to effect, and answer all damages and costs, if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES BOYCE.
L. R. MARSH,
Attorney-in-Fact.
LUTHER R. MARSH.
DENNIS McMAHON.

Sealed and delivered, and taken and acknowledged, this 3d day of August, 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

146 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Luther R. Marsh and Dennis McMahon, being duly sworn, each deposes and says that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

LUTHER R. MARSH.
DENNIS McMAHON.

Sworn to this third day of August, A. D. 1867, before me.
JOHN. A. OSBORN,
U. S. Commissioner.

(Indorsed:) Vol. 19, page 502. U. S. circuit court. James Boyce, libellant & appellant, vs. Steamer Patapsco, her tackle, &c., James A. Borland, claimant, appellee. Bond for costs on appeal. D. & T. McMahon, libellant & appellant's proctors. Filed this 3d day of August, 1867.

147 In admiralty. U. S. circuit court for the southern district of New York.

JAMES BOYCE, LIBELLANT AND APPELLANT,
ag't
THE STEAMSHIP "PATAPSCO," HER ENGINES, tackle, apparel, and furniture, claimants and respondents.

To the honorable the circuit court of the United States for the southern district of New York in the second circuit:

The appeal of the above-named appellant, respectfully shows that, on

or about the 20th day of April, 1866, your appellant exhibited & filed his libel in the district court of the United States for the southern district of New York, against the above-named steamship, in a cause of alleged contract, civil and maritime, and against all persons intervening for their interest therein, praying, amongst other things, that an attachment might issue out of and under the seal of said district
148 court against said vessel, her engine, machinery, tackle, apparel, and furniture, and that all persons having any interest therein, might be cited to appear and intervene for their interest, and answer said libel, and that said court would decree to the libellant and appellant his said alleged damages amounting to $1,715 60; and that said vessel, her boiler, engine, machinery, tackle, apparel, and furniture, might be condemned and sold to satisfy the same, and all of which, by reference to said libel, will more fully appear.

That thereupon an attachment was issued out of said district court, under and by virtue of which the said steamboat Patapsco was seized.

That thereupon the said respondents, as owners and claimants of said steamship, the Patapsco, intervened by claim and filed stipulations in said court, upon which said steamship was released and delivered up to said claimants and respondents.

That afterwards the said claimants and respondents duly filed their answer to said libel, praying, among other things, that said libel
149 be dismissed with costs as by reference to same will more fully appear.

That said cause came on to be heard before the Hon. William D. Shipman, judge of said district court, on the pleadings, proofs, and depositions, and after hearing the same and the arguments of the proctors for the respective parties, and due advisement being had, the said judge did order, adjudge, and decree that the said libel be dismissed with costs to be taxed against the libellant, and said decree was, on the 16th day of July, 1867, entered and filed with the clerk of said district court.

And your appellant saith that said decree was erroneous, inasmuch as your libellant and appellant was entitled to have a decree in his favor for the amount of his claim and damages set up in the libel and condemning said vessel in the amount thereof.

The said appellant for these and other reasons appeals from the whole of said decree and from each and every part thereof, to the next circuit court to be held in said district, and on the said appeal he intends to have said cause heard anew in the said circuit court, on the pleadings,
150 proofs, and depositions in said district court, and on new and further allegations and proofs to be introduced in said circuit court.

And he prays that the records and proceedings in said cause may be returned to the said circuit court, and that said decree and every part thereof may be reversed, and that he may have a decree in his favor for the amount of his said damages and claim with costs, and that such other decree may be made as to the said circuit court shall seem just.

Dated New York, July 29th, 1867.

D. & T. McMAHON,
Proctors for Libellant & Appellant.

(Indorsed:) U. S. district court for the south. dist. New York. 19—502. James Boyce ag't The Steamship "Patapsco." Petition of appeal. Filed Aug. 3rd, 1867. D. & T. McMahon, proctor's appellant, 13 Chambers st., N. Y. City.

Due service of the within petition of appeal is hereby admitted.
Dated N. Y., Aug. 3rd, 1867.

A. J. HEATH,
Proctor for Respondent.
By P———.

151 At a stated term of the circuit court of the United States of America for the southern district of New York in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the 18th day of November, in the year of our Lord one thousand eight hundred and sixty-seven—

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JAMES BOYCE, LIBELLANT & APPELLANT,
vs.
THE SHIP PATAPSCO, &C., JAMES A. BORLAND,
claimant & appellee.

The appeal in this cause from a decree of the district court coming on to be heard—

Mr. D. McMahon is heard on the part of the lib'l't & app'l't.

Mr. C. Donohue is heard on part of appellee.

Mr. D. McMahon is heard in reply.

Cur adv. vult.

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153 At a stated term of the circuit court of the United States of America for the southern district of New York in the second circuit, held at the United States court-rooms, in the city of New York, on Saturday, the 30th day of May, in the year of our Lord one thousand eight hundred and sixty-eight—

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JAMES BOYCE, APPELLANT,
vs.
STEAMSHIP "PATAPSCO," &C., APPELLEE.

This appeal coming up before this court, and after hearing D. McMahon for the libellant & appellant, in support of the appeal, and Charles Donohue and A. J. Heath, for the appellee, opposed, and mature deliberation in the premises being had, it is ordered and adjudged that the decree of the district court below be, and the same is hereby, in all things reversed, with costs, and that a decree be, and the same is hereby, rendered in favor of the libellant against the said vessel for the demands in suit, and that it be referred to one of the commissioners of this court to take proof of the amount due the libellant, and to report thereon with all convenient speed.

S. NELSON.

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155 Circuit court U. S. southern dist. New York.

JAMES BOYCE, APPELLANT,
vs.
STEAMSHIP PATAPSCO, &C., APPELLEE.

Reference under decree dated May 30th, 1868.

JUNE 9TH, 1868.

Present, Mr. McMahon, counsel for appellants, and Mr. Heath, counsel for appellee.

Counsel for appellant offers in evidence the deposition of John C. McGowan, contained in the apostles, commencing at folio 28.

Also deposition of John Coyne & exhibits referred to in it, (A to H.)

Also deposition of Samuel Blaisdell, j'r.

Dennis McMahon, sworn on part of libellant.

The amount of bill of coal delivered as shown by above depositions, together with interest, to the time of filing libel in district court is $1,724 50.

The interest on this amount to date is $257 57; total, $1,982 07.

Adjourned to the 11th inst., at 10 a. m.

156 JUNE 11, 1868.

Present, counsel for respective parties.

Adjourned to the 15th inst., at 10 a. m.

JUNE 15, 1868.

Present, counsel for the respective parties.

Adjourned to the 16th inst., at 9½ a. m.

JUNE 16TH, 1868.

Present, counsel for the respective parties.

Adjourned to the 17th inst., at 9½ a. m.

JUNE 17, 1868.

Present, counsel for the respective parties.

Adjourned to the 18th inst., at 9½ a. m.

JUNE 18TH, 1868.

Present, counsel for the respective parties.

Adjourned to the 20th inst., at 9½.

JUNE 20TH, 1868.

Present, counsel for the respective parties.

Adjourned to the 23d inst., at 9½ a. m.

JUNE 23D, 1868.

Present, counsel for the respective parties.

SAMUEL BLAISDELL, J'r, sworn on part of appellee, says:

157 Am in steamship business. I was, in 1865 & 1866, the agent of the Commercial Steamboat Co., in Baltimore. Patapsco belonged to line. The coal, in February & March, 1866, was ordered by me from Mr. Boyce, entirely. Cannot state exact amount ordered by me. I have my books, which will show all the coal ordered from Mr. Boyce. Have my order-book here. The order-book shows orders

during February & March of 190 tons. These orders were signed either by me, or for me, by my clerk. There was money paid on ac. of this coal ordered for the Patapsco, during February & March. The payment shown by my ledger charged to the Patapsco for coals, paid to Mr. Boyce is $1,036 60. The same charge is shown on my monthly ac. current rendered to the general office in New York, and by them charged to the Patapsco.

Cross-examined:

Q. Give us the dates of the orders for coal delivered to Patapsco in January, February, and March, 1866.

A. Jan. 5, 50 tons; Jan'y 16, 40 tons.
" 18, 10 " " 26, 40 "
February 2, 40 " Feb'y 17, 50 "
" 26, 50 " M'ch 23, 50 "
Making in the aggregate 330 "

I gave the check for the $1,036 60; can't say whether I handed it to Mr. Boyce. Don't think check said on its face for the Patapsco.

158 A receipted bill was taken first. That bill was returned to the general office as a voucher, with my monthly account current. Have no memory of these orders for delivery of coal to the Patapsco apart from my books. I find, in my order-book, an order for 1 cord of wood for Patapsco on 10th February, 1866. This was about the quantity ordered for a trip. On March 15, 1866, I find an order for 1 cord of wood for the Patapsco. I presume she was in the port of Baltimore on these two dates, Feb'y 10 & M'ch 15. She had no regular day for sailing. Can't tell how many trips she made during Feb'y & March. The fact of the wood being ordered on the dates above indicate, to my mind, that she made trips shortly after. Couldn't say where she got the coal for those two trips. She usually took on board about 50 tons for a trip. Under ordinary circumstances this would be for round trip. All the coal for January, February, & March was ordered from Mr. Boyce. There may have been 100 tons between those dates purchased of another person. I can make it certain by a reference to my books in Baltimore as to quantity, time, and the steamer that burned it. Can't say that I was at every delivery of coal. As a general thing the engineers signed receipts for the coal as it was taken; some one always signed them. Can't tell where receipts are; I presume Mr. Boyce has them.

159 The books kept by me during my agency I have. I can only speak of the payment of the $1,036 60 from my books. The entry in my book is in the handwriting of my clerk. I kept no duplicate of the receipts for payment of money. Can't say now whether I paid Mr. Boyce any other sum on the 15th of Feb'y than the one I have named. I never paid in the month of February in advance before coal was delivered. I was examined in Baltimore, in 1866, in this case. I had my books at hand, but as near as I recollect I answered from memory. I believed what I then said to be true.

Redirect:

Sometimes the Patapsco brought hard coal from New York. She always took soft coal from Baltimore.

Adjourned to 29th inst., at 9½ a. m.

JUNE 29TH, 1868.

Present, counsel for the respective parties.

Adjourned to July 2d, at 9½ a. m.

JULY 3D, 1868.

Present, counsel for respective parties.

WILLIAM MCNEFF, being sworn on part of the appellee, says:

160 I was master of the Patapsco in February & March, 1866. During the months of January, February, & March, 1866, she was in the employ of the Commercial Steamboat Co., running to Baltimore. There were four steamers in the line. We received a portion of our coal from Mr. Boyce, in Baltimore, and a portion in New York. I ordered the coal from Mr. Blaisdell, the agent of the company. The company furnished us everything. As near as I can remember we at that time made two or three trips a month, sometimes over and sometimes short. Burnt from 40 to 45 tons a trip; sometimes, when a lighter would come alongside with 60 or 70 tons of coal, we would take part, and perhaps one of the other steamers part, or it might be put on the dock. The engineer received the coal on board. His name is Richard Fleming. He always tends to receipting for the coal. He is now on steamer United States. She is expected here the middle of next week.

Cross-examined:

Can't give now the dates of the trips in February, March, & April. In Baltimore, took soft coal; in New York, hard coal. As general thing used soft coal. A trip is a round trip. As general thing when we took coal out of a lighter, we took part. I kept no account of the coal myself. The engineer left here some two weeks ago, I think.

161 Redirect:

During February & March we rec'd coal once in New York; think about 40 tons.

Adjourned to the 9th inst., at 9½ a. m.

JULY 9TH, 1868.

Present, Mr McMahon, for appellant.

Counsel for appellant offers the direct examination of John Coyne, taken on 27th June, in Baltimore.

Also the evidence of George A. Crook, taken on same day.

Also the testimony of Samuel Blaisdell, j'r, taken June 29th, at Baltimore.

Also testimony of James Boyce, taken at same time in Baltimore.

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163 Circuit court of the United States, New York.

JAMES BOYCE
vs.
STEAMER PATAPSCO.

Depositions of witnesses produced, sworn, and examined the 27th day of June, 1868, at the office of Orville Howitz, No. , St. Paul street, in the city of Baltimore, State of Maryland, in the presence of Orville Howitz, esq., counsel for libellants, and A. I. Heath, esq., counsel for defendants, by consent of said counsel.—(JOSEPH T. AITKINSON,
164 *Notary Public.*)

JOHN COYNE, of the city of Baltimore, aged , being

duly and publicly sworn and examined on the part of the libellants, doth depose and say as follows:

To the first question. What was your occupation in the winter and spring of 1866?

Answer. I was superintending the shipping the coal of Mr. James Boyce from Locust Point.

Second question. Look at the two papers now exhibited to you, and marked Exhibit No. "1," and No. "2," and state what those papers contain; by whom they were prepared.

(Objected to by respondent's counsel.)

Answer. These papers shew the delivery of the coal by me for Mr. Boyce, at Locust Point. They were prepared by me.

Third question. Are they correct?

(Objected to by respondent's counsel.)

Answer. They are.

Fourth question. Please look at paper No. 1, and see whether there is any coal thereon delivered to the steamer Patapsco?

(Objected to by respondent's counsel.)

Answer. Yes. There were 41 tons of coal delivered to the Patapsco on the 10th of February, 1866.—(JOSEPH T. AIKINSON, *Notary*
165 *Public.*)

Fifth question. Please state why the words steamer Kingfisher are stricken out and Patapsco, in pencil, written over the same.

(Objected to by respondent's counsel.)

Answer. The coal was first ordered for the Kingfisher, but the captain of the Patapsco, of the same line, ordered the same to be delivered to the Patapsco.

Sixth question. Look at paper No. 2, and see if there is any coal thereon delivered to the Patapsco.

Objected to by respondent's counsel.)

Answer. There are 25 tons on the 14th of March, 1866.

Cross-examination:

First cross-question. From whom did you receive your order or instructions to deliver coal to the Commercial Steamboat Company?

Answer. From Mr. Boyce, having orders to deliver so many tons of coal to each steamer.

Second cross-question. What do you mean by your answer "so many tons of coal to each steamer?"

Answer. I mean Mr. Boyce would give me an order to deliver the Patapsco so many tons of coal, and the same to other boats running in the same line.

Third cross-question. How often were you in the habit of de-
166 livering coal to the boats of the Commercial Steamboat Company, from Mr. Boyce?

Answer. I can't answer without reference to my papers as memoranda. By reference I find about once a week to each steamer.

Fourth cross-question. How long a time did this continue?

Answer. I can't tell how long; about four months, or six months; I can't tell without going to my books at Locust Point.

Fifth cross-question. Then you were in the habit of delivering coal to the several steamers of the Commercial Steamboat Company every trip they made into Baltimore from the time you commenced till you stopped.

Answer. I was.

Sixth cross-question. How many steamers were running in that line?

Answer. I think there was four to six.

Seventh cross-question. Between what ports or places were these steamers running?

Answer. Between Baltimore and New York, I believe; and occasionally, I believe, a boat went to Charleston.

Eighth cross-question. Did any one of the boats to which you
167 (JOSEPH T. AIKINSON, *Notary Public*) furnished coal ply about this harbor?

Answer. The Eagle did not leave the port to my knowledge.

Ninth cross-question. How often did these steamers plying between New York and Baltimore make their trips?

Answer. From six to eight days, to the best of my knowledge.

Tenth cross-question. What was the name of these steamers?

Answer. Patapsco, Kingfisher, Sea Gulf, and one or two others, of which I cannot recall the names.

Eleventh cross-question. Can you state, of your own knowledge, how many trips the Patapsco made into Baltimore during the time you were delivering coal to the Commercial Steamboat Company?

Answer. I cannot state of my own knowledge. By referring to my memorandum I could state; but I have not got them with me.

Twelfth cross-question. Can you testify, from your own knowledge, the exact number of tons delivered to each of the steamers, from Mr. Boyce, running in that line?

Answer. I cannot, without going back to my accounts.

168 Thirteenth cross-question. Did you take receipts for the coal when you delivered it to the steamers, as delivered?

Answer. I did.

Fourteenth cross-question. From whom?

Answer. From the captain, if on board; if not, from the engineer.

Fifteenth cross-question. Have you the receipts?

Answer. I have not.

Sixteenth cross-question. Was coal ordered for one steamer by the Commercial Steamboat Company at any time or times sent to another or others in the line?

Answer. I sent coal once to the steamer Kingfisher, and it was transferred to the Patapsco by Mr. Boyce's order. My orders all came from Mr. Boyce, with reference to the delivery of coals to all the steamers in this line. And further this deponent saith not.

JOHN COYNE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 27th day of June, 1868, before—

JOSEPH T. AIKINSON,
Notary Public.

169 GEORGE A. CROOK, of the city of Baltimore, aged , being duly and publicly sworn and examined on the part of the libellants, doth depose and say:

To the first question. What is your present occupation?

Answer my present occupation is life insurance agent.

Second question. What was your occupation in the winter and spring of 1866?

Answer. It was clerk and cashier for James Boyce.

Third question. Please turn to the ledger of that period, and state what quantity of coal was delivered to the various steamers of the Commercial Steamboat Line in the month of January, 1866.

Answer. There was delivered coal to the value of $5,849 96.

Fourth question. Was that amount paid, and how, and in what instalments?

Answer. It was paid on the 5th of February, $3,000; on the 9th of February, $1,000; and on the 15th of February, $1,849 96—making $5,849 96.

Fifth question. Do you, of your own knowledge, know anything of the last item named, $1,849 96, and of the account on which it was
170 paid?

Answer. I do; and I remember distinctly that the check for that amount was to close up the purchases and deliverys in the month of January.

Sixth question. Please state how much coal was delivered to the steamers of the Commercial line prior to the 15th of February, 1866, and during the month of February, on account of the Patapsco, and its value.

Answer. There *was* delivered eighty-one tons—delivered from the first to the 15th of February, 1866—amounting to $575 10.

First cross-question. In testifying as to the coal delivered by Mr. Boyce, are you testifying of your own knowledge or from the books?

Answer. From the books.

Second cross-question. Then you know nothing of the sale and delivery of the coals of your own knowledge?

Answer. As to the delivery, I can say I know nothing; but as to the sale, I know that the agent of the Commercial Steamboat Company used to come there and purchase coal; but I can't say how much he purchased.

Third cross-question.—(JOSEPH T. AIKINSON, *Notary Public.*)
171 Did you keep the books for Mr. Boyce from which you have testified in your direct examination?

Answer. I did, so far as the cash operations of the house *is* concerned, and also assisted the general book-keeper to keep the books of the house.

Fourth cross-question. Did you make the entries in the books from which you have testified?

Answer. I did in the cash-book, and no other.

Fifth cross-question. Does your cash-book show the purchase of coals or the delivery of coals to the Commercial Steamboat Company, or to the steamer Patapsco?

Answer. No.

Sixth cross-question. Then you know nothing, of your own knowledge, as to the quantity of coals delivered by Mr. Boyce to the steamers or to the Commercial Steamboat Company.

Answer. No, sir.

Reëxamined-in-chief:

Seventh question. Do you mean, when you speak of having no personal knowledge on the subject, to apply that statement to the payment of which you have spoken—$1,849 96, or have you any personal
172 knowledge in reference to that payment? If so, state your knowledge.

Answer. I, of my own knowledge, know that that money was paid to me by check on account of coal delivered during the month of January.

Recross-examination:

Seventh cross-question. From what do you base your knowledge that the money, (1,849 96,) as you have stated in your last answer, was paid

on the January bills? and state whether or not that does not include coals delivered to the steamer Patapsco.

Answer. I base my knowledge on the bill, as was rendered to the company at the time by order of Mr. Boyce. That includes coal that was delivered to the steamer Patapsco.

Reëxamined-in-chief:

Eighth question. The coal of which you speak as having been delivered to the Patapsco, and the payment for which was included in the checks spoken of, did that include any coal delivered to the Patapsco for the month of February?

(Objected to as leading.)

Answer. No.

Cross-examination again resumed—(JOSEPH T. AIKINSON, *Notary Public.*

173 Eighth cross-question. Was this amount of money paid in the month of February, and do you know whether or not this was not paid from the earnings of the Patapsco of that month, or any other time?

Answer. That amount of money was paid in the month of February, and I do not know whether it was from the earnings of the Patapsco or not.

Ninth cross-question. From whom did you receive the money, and from what parties, and state whether or not it was received from the Commercial Steamboat Company?

(Objected to by libellant's counsel.)

Answer. I received it from Mr. Barry, the collector of Mr. Boyce. It was on account of the Commercial Steamboat Company.

Tenth cross-question. And that is all the knowledge you have about the payment of the sum of money referred to?

Answer. Yes; that is all I have.

GEORGE A. CROOK.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 27th day of *of* June, 1868, before—

JOSEPH T. AIKINSON,
Notary Public.

174 There being no more witnesses present to be examined, the testimony was adjourned, this 27th day of June, 1868, to meet at same place on the 29th day of June, 1868.

Met at same place on the 29th day of June, 1868, in presence of counsel for libellants and defendants, when I proceeded to examine the following witnesses.

JOSEPH T. AIKINSON,
Notary Public.

SAMUEL BLAISDELL, J'r, of the city of Baltimore, aged , being duly a nd publicly sworn and examined on the part of the libellants doth depose and say as follows:

To the first question he saith: Have you in your possession a book shewing the amounts of money paid by you for coal delivered by Mr. Boyce to the different vessels under your control in the month of February, 1866.

Answer. I have.

Second question. By whom was the said book kept?

Answer. By Mr. C. M. Conyers, my book-keeper and cashier at that time.

Third question. Please turn to said book, under date of
175 (JOSEPH T. AIKINSON, *Notary Public*,) February 15th, and see if any payment was made to Mr. Boyce on that day; and if so, for what was the said payment made; and if for coal, then during what month the same was delivered?

Answer. There was paid to Mr. Boyce on the 15th day of February, 1866, for steamship Sea Gull, $1,806 11; on the same day, for the steamship Falcon, $1,587 25; on the same day, for the steamship Patapsco, $1,036 60; on the same day, for the steamship Kingfisher, $1,349; on the same day, for the lighter Eagle, $71. All ordered by me for the steamers named on account of the Commercial Steamboat Company, for the month of January, 1866.

Fourth question. Please state whether the payment of $1,036 60, referred to in your last answer, was on account of any coal delivered during the month of February?

Answer. My books shew that the $1,036 60 was for coal delivered to the steamship Patapsco during the month of January, 1866.

Fifth question. Please now turn to your check-book, if you have it with you, and give the dates, amounts, and order of payment of the sums referred to in your previous answer.

Answer. My check-book shews February the 5th, 1866, favor
176 of James Boyce, account of coal, $3,000; February 9th, 1866, favor of James Boyce, account of coal, $1,000; February 15th, 1866, favor of James Boyce, account of coal, $1,849 96.

Sixth question. I perceive that the amount of the three checks paid during the month of February, equals the amount credited as of the 15th of February to the different steamers you have named. Please explain why it is that the amount on your disbursement-books is all credited as of the 15th of February, while your checks are of different dates.

Answer. I cannot explain that without referring to my journal, as this book to which I now refer is a copy of my account current for the month, forwarded to the general office of the Commercial Steamboat Company in New York.

Cross-examination:

First cross-question. During the time referred to you was acting, was you not, as agent for the Commercial Steamboat Company?

Answer. I was.

Second cross-question. And at the same time you was purchasing coal for the steamboat company for the various boats running in the line of that company?—(JOSEPH T. AIKINSON, *Notary Public.*)
177 Answer. I was.

Third cross-question. Between what port or ports were these boats generally running?

Answer. Generally between Baltimore and New York; occasionally between Baltimore and ports further south.

Fourth cross-question. Can't you state what amount of coal the several boats usually took per trip, naming them?

Answer. As near as I can remember the Kingfisher, Sea Gull, and the Falcon averaged in the neighborhood of 75 tons per round trip. Patapsco, as near as I can remember, about 50 tons per round trip.

Fifth cross-question. Can you state who took the account of coals as

they were delivered on the several boats mentioned, and whether or not they were receipted for?

Answer. As a general thing the engineer of the steamer signed a receipt for the coal delivered. No particular account was taken of the coal, but the engineers of the several steamers *was* supposed to know by the books of their coal in the bunkers—whether or not they received the quantity coal for which they receipted.

Sixth cross-question. Can you state the name or names of the
178 engineer or engineers of the Patapsco during the time she was running on the line of the Commercial Steamboat Company?

Answer. There was but one chief-engineer while she was in the employ of the Commercial Steamboat Company, by name Richard Fleming.

Seventh cross-question. The monies which you have testified as having paid on account of these various steamers, including the Patapsco, I understand you to have been paid by the Commercial Steamboat Company?

Answer. The various sums of money which I have testified as having been paid to Mr. Boyce, were paid by myself as agent of the Commercial Steamboat Company.

Eighth cross-question. During this time of the running of the boats, did you have in your possession the earnings of the different boats, including the Patapsco?

Answer. From month to month I did have wholly or in part the earnings of the different boats, including the Patapsco.

Ninth cross-question. From the earnings of these various boats, did you have sufficient to disburse them?

Answer. I did up to the first of January, 1866; after that time the earnings were paid to the general office in New York, by drafts, by reason of which (JOSEPH T. AIKINSON, *Notary Public*,) there was
179 not a sufficient amount in my hands to pay the bills as they were called for, or to meet the expenses as they matured.

Tenth cross-question. Then I understand you that the earnings of the boats were sufficient to pay these bills, or at least you received sufficient monies from their earnings, as agent of the Commercial Steamboat Company, necessary to pay all disbursements incurred, including coals furnished.

Answer. That the monies received by me from the earnings of those boats was, as near as I can remember, sufficient to pay all the expenses incurred in Baltimore.

Examination-in-chief resumed:

Seventh question. How then does it happen, if there was money sufficient received by you to pay the bills, that any of the bills remained unpaid?

Answer. My bills generally were paid at the end of the month; between the first and the last of the month. I might be drawn upon for funds in my hands on account of the earnings of the steamers to an amount that would not leave sufficient funds in my hands to meet the bills or the current expenses of the month as they matured.

180 Eighth question. Did you ever refuse to pay the bills constituting the expenses of the boats when due, and have at the same time in your possession funds from the earnings of the boats to meet the amount of said bills?

Answer. I never remember refusing to pay a bill when it was presented, if due, when I had funds of the Commercial Steamboat Company in my hands.

Ninth question. Was the bill in this case due to Mr. Boyce on account of the steamer Patapsco presented to you for payment; and if so, had you, at that time, any funds in hands belonging to the owners of said boat, with which said bill could be paid.

(Objected to by claimants' counsel, and question withdrawn by libellant's counsel.)

Tenth question. Look at the item in that account, now shown you, marked Exhibit "Z," under date of May the 5th, by cash, account Eagle $136, and state if you have any recollection of that credit and for what it was given.

(Objected to by respondent's counsel). (JOSEPH T. AIKINSON, *Notary Public.*)

181 Answer. I have an indistinct recollection that the $136 stated in the account, was on account of coal delivered to the steamer Eagle, as well as I can recollect.

Cross-examination resumed:

Eleventh cross-question. By whom was that $136 paid, and was the steamer Eagle running in the line of the Commercial Steamboat Company.

Answer. It was paid by me. The steamer Eagle was not a sea-going steamer, but a lighter, owned by parties in New York, and chartered by the Commercial Steamship Company and used by said company in the port of Baltimore for the purpose of lightering or removing freights to and from the line. The $136, as near as I can recollect, was money remitted to me from New York by the owners of said lighter.

Twelfth cross-question. Did the Commercial Steamboat Company, during the times you have mentioned, have a place of business in Baltimore?

Answer. They did.

Thirteenth cross-question. From your knowledge, as agent of the Commercial Steamboat Company, were the earnings of the boats sufficient to meet their expenses?

182 Answer. I have already answered that they were.

SAMUEL BLAISDELL, J'R.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 29th day of June, 1868, before

JOSEPH T. AIKINSON,
Notary Public.

JAMES BOYCE, of the city of Baltimore, aged , being duly and publicly sworn and examined on the part of the libellants, doth depose and say as follows:

To the first question. In the account Z, herewith filed, there is an allowance under date of March 30th, of $73 50 on 147 tons. Will you please explain the meaning of that credit?

Answer. I find that it was 50 cents a ton on 147 tons abated from the original charge, and 67 tons of that 147 was coal that went on board the steamer Patapsco, for which the original charge on my books stands for 14th of March, 25 tons at $7 per ton, which amounts to $175; on the 24th of March, 42 tons, at $7 a ton, amounts to $294. Bill originally made out and filed in this case was made at $6 50 per ton less
183 the (JOSEPH T. AIKINSON, *Notary Public,*) deduction, shewing the difference between my books and the bill as rendered of $33 50.

Second question. Do I then understand from your answer that, in the bill filed in this case as the basis of your claim for libel, the deduction has been already made by charging the coal at $6 50 per ton, instead of first charging it at $7 per ton and then deducting therefrom 50 cents per ton?

Answer. The allowance has already been made in the bill filed, by charging the coal at only $6 50.

Third question. What then is the real balance now due you on account of coal delivered the steamer Patapsco and not paid for.

(Objected to.)

Answer. The amount actually owing for coal delivered during the months of February and March, 1866, to the steamer Patapsco, is $1,715 60 with interest from the date of delivery.

Cross-examination:

First cross-question. In the testimony you have given to the direct questions put to you, is it based from your own personal knowledge or from books or memoranda?

184 Answer. I now take it from my books or memoranda. All charges and allowances made in my books are made by my direct orders generally.

Second cross-question. You have no direct knowledge of the number of tons of coal delivered to the several steamers, as I understand?

Answer. I have a direct personal knowledge of the delivery of coal to the several vessels running in the Commercial Steamboat Line. The exact number of tons charged is derived from the returns of the delivery clerk.

Third cross-question. Have you your account of the amount of coal furnished the Commercial Steamboat Line?

Answer. I have; it is filed in my direct examination.

Fourth cross-question. Who applied to you for the coal you delivered to the boats of this line?

Answer. Mr. Blaisdell.

Fifth cross-question. Then the captains of the boats never applied to you?

(Objected to by libellant's counsel.)

Answer. They may have, but my recollection is more distinct as to Mr. Blaisdell, who generally ordered the coal for all the boats running in this line.

Sixth cross-question. For what length of time were you furnish-

185 ing (JOSEPH T. AIKINSON, *Notary Public*,) coal to the boats of this line?

Answer. As near as my memory serves me, it was some three or four months.

Seventh cross-question. State, if you can, how often they were running in and out of Baltimore.

Answer. To the best of my knowledge, they made a trip about once a week.

Eighth cross-question. You received monies from time to time on account of coals furnished to the Commercial Steamboat Company for this line of steamers?

Answer. I did.

Ninth cross-question. That money was credited by you as received in gross?

Answer. No. It was credited to the different steamers.

Tenth cross-question. Your accounts were kept with the Commercial Steamboat Company?

Answer. My accounts were kept under the head of "The Commercial Steamboat Company," but the charges made to each steamer for the amount of coal delivered on board of her. The charges on my books were made, as appears by the accounts filed in this case in the original record.

Eleventh cross-question. Then your items were for coal delivered to each steamer respectively?

186 Answer. Yes, they were.

Twelfth cross-question. Since the commencement of this action have you received any monies on account of coals delivered to the Commercial Steamboat Company?

Answer. I did receive some money on account of coal delivered to other steamers, other than the Patapsco, but none on account of the Patapsco.

Thirteenth cross-question. You received this money from the Commercial Steamboat Company, or from whom did you receive it?

Answer. I did not receive it from said company. I received it as the proceeds of a suit brought against two or three of the steamers running in this line; names of the boats, as near as my memory serves me, Kingfisher, Sea Gull, & Falcon.

Fourteenth cross-question. You compromised, then, the claims just referred to with the Commercial Steamboat Company?

Answer. The compromise was made by my counsel in New York.

Fifteenth cross-question. Against whom was the action brought?

(Objected to.)

187 Answer. As near as my memory serves me, the (JOSEPH T. AIKINSON, *Notary Public*,) proceedings were against each boat for amount of coal delivered on board.

Sixteenth cross-question. Have you a distinct recollection of that, and do you recollect as distinctly as any part of the testimony which you have given in this case?

Answer. As to the bringing of the suits, I have already stated, to the best of my knowledge; but that matter was left entirely to my counsel in New York. I do not.

JAMES BOYCE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 29th day of June, 1868, before—

JOSEPH T. AIKINSON,
Notary Public.

Costs of depositions, $15; paid by libellants.

JOSEPH T. AIKINSON,
Notary Public.

188

189 *Coal delivered from Locust Point for ac. of James Boyce.*

FRANKLIN.			GEORGE'S CREEK.		
Date.	No. tons.	To whom.	Date.	No. tons.	To whom.
Feb'y 5	31	New line Richmond b'ts.	Feb'y 3	4	St. Vigilant, (Bandele.)
" "	40	" " " "	" 5	60	Norfolk barge.
" "	51	" " " "	" "	51	Tregot, (Thompson & Co.)
" 7	30	" " " "	" "	10	St'r Eagle.
" "	50	Maryland Steam Sugar Ref'y.	" "	10	St'r Emma, (A. Jones.)
" 8	32	New line Richmond b'ts.	" 6	62	Norfolk barge.
" 9	31	" " " "	" "	40	Ja's Boyce' yard.
	265		" "	80	St'r Kingfisher.
" 9	50	S. M. Johnson, anthracite.	" 7	6½	St'r Mary Shaw, (A. Jones.)
			" "	7	St'r Olive Branch, " "
			" "	61	Norfolk barge.
			" "	45	Harvey Boyce' yard.
			" 8	4	St'r Emma, (A. Jones.)
			" 9	63	Norfolk barge.
			" "	31	Brig Ann Elizabeth.
			" "	5	St'r Vigilant, (Mr. Bandele.)
			" "	6	St'r Marcella, " "
			" "	42	Boyce's yard.
			" "	41	Patapsco.
			" "	62	Norfolk barge.
			" "	39	New line Richmond b'ts.
				729	

Time for men on Locust Point Cove wharf, week ending 10th Feb'y, 1866 ..... $83 90

Franklin Coal Co.	$20 20	
Geo. Creek Mining Co.	56 20	
Anthracite Com. (Anth.)	7 50	
		$83 90

JOHN COYNE.

190 (Endorsed:) Report. John Coyne. Feb'y 10, 1866.
This is Exhibit No. "1," referred to in testimony of John Coyne.

265	76 40	JOSEPH T. AIKINSON,
729	69 58	*Notary Public.*
994	6 82	

191 *Coal delivered from Locust Point for ac. of James Boyce.*

Date.	No. tons.	To whom.	Date.	No. tons.	To whom.
M'ch 12	50	Maryland Sugar Ref'y.	M'ch 10	35	Ind. Enterprise St'b't Co.
" "	31	New line Richmond b'ts.	" "	6	Steam'r Mary Shaw, (Jones.)
" "	30	Steamer Balloon.	" 12	61	Norfolk barge.
" 13	30	New line of Richmond b'ts.	" "	24	John Coyne.
" "	60	Schooner Native.	" "	4	St'r Ella, (League.)
" 14	30	New line Richmond b'ts.	" 13	50 10-20	Ind. Enterprise St'b't Co.
" "	120	" " " Dictator.	" "	61	Norfolk barge.
" 15	30	" " " b'ts.	" "	10	St'r Emma, (Jones.)
" 16	30	" " " "	" 14	25	St'r Patapsco.
" "	175	Sch'r Tho's Miskimmon.	" 15	63	Norfolk barge.
" 17	30	New line Richmond b'ts.	" "	1	John Coyne.
" "	52	Maryland Sugar Ref'y.	" "	2	St'r Vigilant, (Bandele.)
" "	75	Sch'r Ja's Hendrickson.	" 16	30	St'r Balloon.
		ANTHRACITE COAL.	" "	50	Ind. Enterprise St'b't Co.
M'ch 17	70	S. Blaisdell, j'r, ag't.	" 17	62	Norfolk barge.
			" "	41	Ja's Boyce' yard.

Time for men on Locust Point Cove wh'f, week ending 17th M'ch, 1866 ..... $82 00

Franklin	$42 15	
Geo. Creek	29 35	
Anthracite	10 50	
		$82 00

JOHN COYNE.

192 (Endorsed:) Report. John Coyne. March 17, 1866.
This is Exhibit "2," referred to in testimony of John Coyne.
JOSEPH T. AIKINSON,
Notary Public.

193 *The Commercial Steamboat Company in ac. with James Boyce.*

1866.		DR.	
Jan'y 10,	25 tons U. A. lump coal, st'r Falcon,	10 30	$ 257 50
25,	135 " " " " " " "	9 85	1,329 75
29,	137 16 " in cars, wh'f,	9 50	1,309 11
3,	70 " R. M. coal " Sea Gull,"	7 10	497 00
6,	50 " " " Patapsco,"	7 10	355 00
16,	45 " " " "	7 10	329 50
19,	21 " " " "	7 10	149 10
27,	40 " " " "	7 10	284 00
11,	80 " " Kingfisher,	7 10	568 00
19,	50 " " " "	7 10	355 00
31,	60 " " " "	7 10	426 00
			$5,849 96
Feb'y 28,	25 tons U. A. lump coal,	9 50	237 50
	65 " " " "	8 50	552 50
5,	10 " R. M. " Eagle,	7 10	71 00
6,	80 " " " Kingfisher	7 10	568 00
22,	70 " " " " " "	7 10	497 00
3,	40 " " " Patapsco,	7 10	284 00
10,	41 " " "	7 10	291 10
17,	50 " " "	7 10	355 00
27,	50 " " "	7 00	350 00
Mar. 9,	50 " U. A. " "	8 50	425 00
17,	150 " "	7 50	1,125 00
3,	80 " R. M. Kingfisher,	7 00	560 00
19,	80 " " "	7 00	560 00
14,	25 " " Patapsco,	7 00	175 00
24,	42 " " "	7 00	294 00
Ap'l 4–9,	195 " U. A.	7 50	1,462 50
16,	10 " R. M. Eagle,	6 50	65 00
			$7,911 70

194

1866.	CR.		
Feb'y 5,	By cash on ac. Jan'y bills,	3,000 00	
9,	" " " " " "	1,000 00	
15,	" " " " " "	1,849 96	
			$5,849 96
Mar. 30,	By allowance on 147 tons @ 50c,	73 50	
May 5,	" cash ac. Eagle, 71 00, 65 00	136 00	
June 30,	" " draft on D. McMahon in settlement of claim against Kingfisher & "Sea Gull,"	3,008 41	
			$3,217 91

(Endorsed:) This is Exhibit "Z," referred to in testimony of James Boyce.

JOSEPH T. AIKINSON,
Notary Public.

Opened and filed in open court the 1st day of July, 1868.

195

CUSTOM-HOUSE, BALT'O, M'D,
Collector's Office, July 14, 1868.

The steamer Patapsco, "W. W. Neff," master, cleared from this port to the port of New York on the following, viz:

6th	day	of	January,	1866.
20th	"	"	"	"
27th	"	"	"	"
3d	"	"	February,	"
12th	"	"	"	"
20th	"	"	"	"
27th	"	"	"	"
15th	"	"	March,	"
24th	"	"	"	"

I certify this to be a true copy of the original clearances of said steamer per above dates, on file in this office.

JOHN McCORMICK,
Dep'y Collector.

(Endorsed:) Boyce vs. The Patapsco. Cert'e of collector. P'd fees 2 25.

196

197

JULY 9, 1868.

Present counsel for respective parties.

RICHARD FLEMING sworn for appellee says:

Engineer of the Patapsco in January, February, March & April, 1866; I was employed by Mr. Bacon, pres't of the Commercial Steamboat Co.; during that month Patapsco was running between New York & Baltimore; I knew quantity of coal used on that steamer per round trip; 45 tons was necessary for a round trip; while running we received 40 tons in New York; we received only soft coal from Mr. Boyce; she made 6 voyages while running from *Boyce*; I made requisition on Blaisdell for coal; I received coal from the Commercial Steamboat Co.; I received coal from a lighter in January, 1866; I did not receipt for that; the remainder of the coal I received from a wharf belonging to the company; coal was not weighed by anybody.

Cross-examined:

I kept ac. of my voyages; I don't know where those accounts are; we got coal twice in January; I can't give you the dates of those 6 voyages; I can't give you the dates of all the times the Patapsco got coal from Mr. Boyce; we got 50 tons one voyage, 40 tons the next; every other trip we took 50 tons & 40 tons; we took the coal from Boyce from
198 the Commercial Steamboat Co.'s wharf; coal was there each time we took it; I did have a log-book of those voyages; it is left aboard of the ship.

Redirect:

The coal was taken from a large amount on the dock; the boats, to the best of my knowledge, using out of the same pile.

(Endorsed:) Circuit court U. S., southern district New York. James Boyce, libellant & appellant, vs. Steamship "Patapsco" &c., appellee. Testimony on reference. Filed July 15, 1868.

199 [H. Anstice & Co., stationers, 22 Nassau street, N. Y.]

Commissioner's report.

Circuit court of the United States for the southern district of New York.

JAMES BOYCE, LIBELLANT & APPELLANT,
vs.
STEAMSHIP PATAPSCO, APPELLEE.

In pursuance of a decretal order made in the above-entitled cause, on the thirtieth day of May, in the year of our Lord one thousand eight hundred and sixty-eight, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant for coal furnished the above-named steamship, and to report thereon to this court with all convenient speed:

I, Kenneth G. White, the commissioner to whom the matter was referred, do report that I have been attended by the proctor for the libellant & by the proctor for the claimant, and have taken and examined the testimony offered in support of the libellant's claim, & also that offered on part of claimants, and do find that there is due to the libellant the sum of nineteen hundred & eighty-two dollars and seven cents, ($1,982 07.)

Dated the 15th day of July, A. D. 1868.

All of which is respectfully submitted.

KENNETH G. WHITE,
U. S. Commissioner.

D. & T. MCMAHON,
Proctors for Libellant.

200 (Indorsed:) Vol. , No. . United States circuit court, for the southern district of New York. James Boyce, libellant & appellant, vs. Steamship Patapsco, &c., appellee. D. & T. McMahon, proctors for libel't. Commissioner's report. $60. Filed the 15th day of July, 1868.

201 *Exceptions to com. report.*

U. S. circuit court, south. dis. of New York.

JAMES BOYCE
vs.
THE STEAMER PATAPSCO, HER ENGINES, &C.,
James A. Borland, claimant.

The claimant and respondent hereby excepts to the report of the

commissioner herein made under the order of this court, dated the 30 day of May, 1868, for the following causes, that is to say:

First. Because the commissioner in his said report erred in allowing the said libellants the sum of nineteen hundred eighty-two and $\frac{07}{100}$ dollars, ($1,982 07,) which sum is erroneous, as will appear from the testimony.

Second. Because the commissioner erred in his said report in finding any sum over and above thirteen hundred & forty-nine dollars, ($1,349,) with interest, from date of delivery of coals, if anything.

202 Third. Because it is plain from the testimony that the commissioner rejected the testimony of claimant's witnesses, Samuel Blaisdell, the agent of steamboat co., William W. Neff, master of steamer, and Richard Fleming, the engineer, and found for the whole amount of coals charged in the libel. As testified to before the commissioner by Boyce, the libellant, the actual sum, with interest, as testified to by Boyce, would amount to the sum of two thousand two & $\frac{7}{100}$ dollars, ($2,002 07.)

Fourth. Because the commissioner erred in disregarding the testimony of Blaisdell, Neff, and Fleming, as to the quantity of coals consumed, and its value, and trips made by the steamer in the months of February and March.

Fifth. Because the commissioner erred in admitting the testimony of Boyce, the libellant, who testifies only from knowledge derived from his books of account without any personal knowledge of the delivery of the coals, and without producing the books. The books should have been produced before the commissioner.

203 Lastly. The claimants except to each and every part of said report, and to the conclusions and amount arrived at by said commissioner.

Dated July 16th, 1868.

A. J. HEATH,
Proctor for Claimant.

To the CLERK of the U. S. circuit court, south. dist. of New York.

(Endorsed:) U. S. circuit court. James Boyce vs. The Steamer Patapsco, James A. Borland, claimant. Exceptions to com'r report. A. J. Heath, proc. for clam't. To the clerk of the U. S. circuit court, southern district of New York. To D. & T. McMahon, esq'rs., proctors for libellants. Filed July 17, '68.

204

205 In admiralty. United States circuit court, S. D. of New York.
In open court.

JAMES BOYCE
vs.
STEAMSHIP PATAPSCO.

I do order that the exceptions to the commissioner's report in this cause be submitted to me on written points, within 20 days after the making and service of this order, at Washington.

New York, Oct. 2d, 1869.

S. NELSON.

(Endorsed:) In admiralty. U. S. cir. c't, S. D. of New York. James Boyce vs. Steamship Patapsco. Order of Judge Nelson. D. & T. McMahon. Served on claimant's proctor, Oct. 4, 1869.

I admit service of a copy of the within. N. Y., October 2, '69.

Filed October 4, '69.

206

207 At a stated term of the circuit court of the United States of America for the southern district of New York in the second circuit, held at the United States court-rooms, in the city of New York, on the 11th day of February, in the year of our Lord one thousand eight hundred and seventy—

Present, the Honorable Samuel Nelson, associate justice of the Supreme Court of the U. States.

JAMES BOYCE
vs.
THE STEAMSHIP PATAPSCO, HER TACKLE, &C.

On reading and filing the report of Kenneth G. White, esq., United States commissioner, to whom it was referred to ascertain and compute the amount due the libellant for coal furnished the above-named steamship, and to report thereon to this court with all convenient speed, by which there is reported due the libellant for coal furnished as aforesaid, the sum of nineteen hundred and eighty-two dollars and seven cents, on the July 15th, 1868, and also on reading and filing the exceptions of the claimants of said vessel to said report, and after hearing Dennis McMahon, esq., of counsel for the libellant, in support of said report and against said exceptions, and A. J. Heath, esq., of counsel for the claimants of said steamship, against said report and in favor of said exceptions, and due deliberation being had:

Now, on motion of D. & T. McMahon, proctors for libellant, it is ordered, adjudged, and decreed that the said report be, and the same is, in all things confirmed, and that James Boyce, the said libellant,
208 recover in this appeal and action against The Steamboat Patapsco, her tackle, &c., the amount reported due as aforesaid, and interest on said amount so reported due from the date of said report, together with his costs in this court, and in the district court below to be taxed, and that the said steamboat, her tackle, apparel, and furniture, be condemned therefor.

And on like motion, it is further ordered, and adjudged, and decreed, that, out of the proceeds of the stipulation of the claimants for costs and value when paid into the registry of this court, the clerk of this court do pay to the libellant or to his proctors the amount so reported due with the interest thereon as aforesaid, and also his taxed costs in this court, and in the district court below.

And on like motion, it is further ordered that, unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, *that* the clerk after deducting the taxed costs of the officers of this court, distribute the proceeds in satisfaction of this decree.

(S'd) S. NELSON.

A copy:

KENNETH G. WHITE, *Clerk.*

(Endorsed:) In admiralty. U. S. circuit court, S. D. of New York. James Boyce vs. Steamship Patapsco, her tackle, &c. Decree in rem on confirmation of commissioner's report. D. & T. McMahon, proctors libell't. Filed Feb'y 12, 1870.

209 U. S. circuit court, southern district of New York.

JAMES BOYCE, LIBELLANT & APPELLEE,
vs.
THE STEAMER PATAPSCO, HER TACKLE, &C.,
James A. Borland, claimant & appellant.

To the honorable the Supreme Court of the United States:

The appeal of James A Borland, claimant and appellant, respectfully shows:

That, on or about the 20th day of April, A. D. 1866, the above-named libellant exhibited his libel in the district court of the United States for the southern district of New York, against The Steamer Patapsco, her engines, tackle, &c., in a cause civil and maritime, for the recovery of coals alleged to have been furnished to the said steamer; that the claimant duly appeared in said action and filed his claim to said vessel, and entered into stipulations, and thereafter filed his answer to said libel and such proceedings were thereupon had in said cause, that, on or about the 18th day of July, 1867, a final decree was made and pronounced therein by the said district court, wherein it was adjudged and
210 decreed that the said libel be dismissed with costs.

That thereupon the said libellant and appellee appealed from said final decree to the circuit court of the United States for the southern district of New York in the second circuit, and the said cause was duly removed thereby into the said circuit court, and there tried anew, and such proceedings were had, on or about the 20th day of May, A. D. 1868, it was by the said circuit court adjudged and decreed that the said decree of the district court be reversed, and further ordered that said cause be referred to a United States commissioner to ascertain and compute the amount due to the libellant; that, in pursuance of said order, such proceedings were had before the said commissioner that, on the 15th day of July, A. D. 1868, said commissioner duly filed his report in the said circuit court, by which report there was found due to the libellant and appellee, nineteen hundred eighty-two and $\frac{1}{100}$ dollars; to which report of said commissioner, the said claimant and appellant duly filed his exceptions, and said exceptions being duly heard by said circuit court, and such further proceedings being had in said cause, that, afterwards, and on the 11th day of February, A. D. 1870, the said circuit court made a final decree in said cause, whereby it was ordered, adjudged, and decreed that the said report of the said commissioner be in all things confirmed, and that the said libellant recover against
211 the said Steamboat Patapsco, her tackle, &c., the amount reported due as aforesaid, and interest on said amount so reported due from the date of said report with costs, which sum and amount so adjudged, ordered and decreed by the said circuit court as aforesaid, exclusive of costs, is two thousand two hundred and $\frac{44}{100}$ dollars; which said decree of said circuit court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and re-

spectfully prays that the said decree of the said circuit court and the libel, answer, pleadings, depositions, evidence, and all other proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the cause anew, and that the said decree of the said circuit court and every part thereof may be reversed, and a decree made dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem just.

A. J. HEATH,
Proctor for Claimant Appellant.

C. DONOHUE, *Advocate.*

212 (Endorsed:) U. S. circuit court. James Boyce, libellant & appellee, vs. The Steamer Patapsco, her tackle, &c. James A. Borland, claimant & appellant. Appeal. A. J. Heath, proctor for claimant and appellant. Filed February 19th, 1870.

213 *Bond for costs.*

Supreme Court of the United States of America for the southern district of New York in the second circuit.

JAMES BOYCE, LIBELLANT & APPELLEE,
vs.
THE STEAMER PATAPSCO, HER TACKLE, &c.,
claimant & appellant.

Know all men by these presents that we, James A. Borland, John Zittlosen, & James Borland, are held and firmly bound unto the above-named libellants & appellee in the sum of six thousand dollars, to be paid to the said libellant & appellee; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the eighteenth day of February, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named claimants & appellants have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. A. BORLAND. [L. S.]
JOHN ZITTLOSEN. [L. S.]
JAMES BORLAND. [L. S.]

Sealed and delivered, and taken and acknowledged this 18th day of Feb'y, 1870, before me—

JOHN A. SHIELDS,
U. S. Com'r.

214 UNITED STATES OF AMERICA,
Southern District of New York, ss:

John Zittlosen, of No. 11, Bank of the City of New York, & James Borland, of No. 171 Amity street, of the city of Brooklyn, being duly sworn, each deposes and says that he is worth the sum of six thousand dollars over and above all his just debts and liabilities.

JOHN ZITTLOSEN.
JAMES BORLAND.

Sworn to this 18th day of Feb'y, A. D. 1870, before me—
JOHN A. SHIELDS,
U. S. Commissioner.

The foregoing bond is approved as to its form and the sufficiency of the sureties, and the penalty.
February 19, 1870.

SAM'L BLATCHFORD.

(Indorsed:) Vol. . Page . U. S. Supreme Court. James Boyce, lib'l't & appellee, vs. Steamer Patapsco, her tackle, &c., cl'm'ts & appellants. Bond for costs and damages. A. J. Heath, appellant's proctor. Filed this 19th day of Feb'y, 1870.

215 By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York in the second circuit. to James Boyce:

Whereas James A. Borland, claimant of the steamboat Patapsco, her engines, tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York in the second circuit, made in favor of you, the said James Boyce, against the said Steamer Patapsco, her tackle, &c., and has filed the security required by law: You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, at the southern district of New York, in the second circuit, the 19th day of February, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fourth.

SAM'L BLATCHFORD.

216 (Endorsed:) U. S. Supreme Court. James Boyce, libellant & appellee, vs. The Steamer Patapsco, her tackle, &c. James A. Borland, claimant & appellant. Citation on appeal. A. J. Heath, proctor for claimant & appellant.
Service admitted.

D. MCMAHON.

FEB'Y 19, 1870.

Service of a copy of appeal also admitted.

D. MCMAHON.

FEB'Y 19, 1870.

Filed Feb'y 21, 1870.

217 U. S. circuit court, southern district of New York.

JAMES BOYCE, LIBELLANT & APPELLEE,
vs.
THE STEAMER PATAPSCO, HER TACKLE, &C.,
James A. Borland, claimant & appellant.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

A. Chesebrough, being duly sworn, saith that he served, on the 21st day of February, A. D. 1870, a copy of the appeal and a copy of the citation, filed in this cause with the clerk of the circuit court in and for the southern district of New York, by delivering said copy of the citation and said copy of appeal to the said appellee personally, and by leaving said copies of appeal and citation with the said James Boyce, appellee as aforesaid.

A. CHESEBROUGH.

Subscribed and sworn to this 21st day of February, A. D. 1870, before me.

JNO. S. HANAN,
U. S. Commissioner for Md.

218 (Endorsed:) U. S. circuit court. James Boyce, libellant & appellee vs. The Steamer Patapsco, her tackle, &c. Aff. of service of copy appeal & citation on appellee. Filed Feb'y 23, '70.

(Indorsement on cover:) No. 340. The Steamer Patapsco, her tackle, &c., James A. Borland, claimant, appellant, vs. James Boyce. S. New York C. C. U. S. Filed 6th December, 1870.

U. S. Supreme Court.

THE STEAMER "PATAPSCO,"
JAMES A. BORLAND,
Appellant,

vs.

JAMES BOYCE,
Appellee.

Points of Appellant on Motion to dismiss.

The decree from which this appeal is taken, is found at page 75 of the Record, and gives the libellant judgment for the amount reported, *with interest from the date of the report.* That report is to be found at page 73, and finds that there is due the libellant, at the date of the report, $1,982.07, and the report is dated 15th July, 1868. The date of the final decree is February 11th, 1870, being one year, six months and twenty-six days; and the amount of the decree, as payable on the day of its date, was $2,200 and upwards—see affidavit. On this state of facts the appellant moves to dismiss.

I.—The decree is drawn by the libellant, and subjects claimant, by its terms, to pay the sum of $2,200 and costs, that being the amount of the report, with interest. The law, see 2 Statutes at Large 244, Chap. xl., § 2, gives an appeal where the sum in dispute, exclusive of costs, exceeds $2,000, and the petition on appeal, p. 76, shows the amount. Can any one, looking at the record, honestly pretend that the amount in dis-

pute on our appeal is not upward of $2,000? It would be a strained construction of the record to find otherwise.

II.—The question of how much is in dispute is open to proof by affidavit, if it should be doubtful in the record; here although it is not doubtful in the record we have made, the proof that the amount exceeds the jurisdictional amount. The moving affidavit nowhere pretends the amount collectable under the decree is not over $2,000.

See Grace Girdler Dec Term. 1847
3 Peters, 33.
7 " 453.

The only cases looking the other way are,
17 Howard 18.
17 " 19.

In those cases it was not pretended that had the libellant succeeded in obtaining a decree where the amount claimed and interest and the amount really collectable would be over $2,000, that the appeal did not exist. All that was decided was when the libellant only claimed less than $2,000 it was not for him to increase the amount when beaten so as to give the Court jurisdiction To allow the libellant to frame this decree as he attempted in this case, and as he has done here, thus escaping an appeal being taken by us and by adopting a form of a decree, thus to shut us out, would be a simple denial of justice.

The motion should be denied.

C. DONOHUE.
Of Counsel for Appellant.

U.S. Supreme Court.

THE STEAMER "PATAPSCO,"
Appellant,
ads.
JAMES BOYCE,
Appellee.

Brief and Points for Appellant.

In this case the facts appear, that the appellee is a coal miner and vender of coal at Baltimore, and was so at the time the goods for the proceeds of which this suit was brought, were sold to the vessel at and before the respective sales of coal. The Commercial Steam Boat Company, a corporation organized under the laws of R. I., had established a line of steamers between New York and Baltimore, and sometimes ran steamers between Baltimore and more Southern ports. Each of the steamers made round trips in about eight days, nearly four trips each way per month. (See fol 160. p 60.

The Company had a regular office at Baltimore, and agent established there. Some months after the line was established, the agent applied to the libellant to furnish coal. The libellant did furnish coal, and the mode and manner of the charge, and as we insist the admitted credit was given, is set forth in the case (see

ex. fol 41. 60 During the time goods were being supplied, the Company borrowed the steamer "Patapsco," or chartered her to run on that line; the steamer belonged to John R. Bacon, who resided in New York, (see and was under mortgage to the claimant, James Borland.

We submit that while there is much general talk about the coal being supplied on the order of the captain of the vessel, there is no proof in reality of any such orders or receipts from the vessel, and that the testimony of the captain shows no supplies were made to the vessel direct from the libellant at all.

The whole law and authority in the matter, is set out and fully considered in the cases of the ~~Cuba~~ Lulu, 10 Walles, 192; the Kalorama and the Custar, 10 Wall, 204; and by the law in those cases, the case is to be disposed of.

First.

The claim sought to be enforced here, is nothing short of a running account between a vender and not the owner of the boat, or any one boat, but several vessels, and of a running account against those several boats. It is respectfully submitted that as to the facts in the case of Pratt & Reed, 19 How. 359 no one doubted the justice of that decision, and that it is only the general language and general rule too strongly laid down in that case, that the decision has been modified, and that this case is in all forms with Pratt & Reed.

Second.

Both the case of Pratt *v.* Reed, 19 How. 359 and all the cases above referred to, the doctrine is established, that for supplies furnished to a vessel in a foreign port, the necessity, render the circumstances stated in the cases, a *presumption of credit* of the vessel existed, nothing more. We submit, that where the libellant who furnishes the goods is personally examined, no such presumption can be inferred when he does not state or claim that he trusted the credit of the vessel, or that he dealt on her credit. See his testimony here. p 67

It is a good and reasonable presumption, that when the libellant's mouth is shut to presume a credit, but when he is examined no such presumption should be made.

Third.

But whatever presumption is to be drawn from the facts required to make such lien, no such presumption exists here, but the contraryis shown :

1. The goods are not charged to the vessel and although the libellant is sworn this is not explained.

2. The libellant's book-keeper is sworn and he states that where the vessel is to be charged her name is placed in the account. See p 39

3. The fact that the account is a general and running

account is at total variance with the reason given in the cases to hold a lien.

4. The steamer, as far as cash was concerned, had not only credit, but on her freights enough cash to pay. See testimony of Blaisdell.

That Mr. Boyce waited a month for the Company and so allowed them to draw for and use the vessel's funds, is not in favor of such credit; the libellant knew or is presumed to know she had the funds arising from the freight to pay her debt.

5. The dealing was not without an account of the vessel.

It is respectfully submitted, that to affirm the judgment, is to lay down a rule that makes the title to ships really worthless and sets up a bar to these conveyances that will make their trrnsfer impossible. It is encouraging the lowest and grossest dealings by vendors at the expense of the swapping interest.

We ask that the judgment should be reversed.

CHAS. DONOHUE,
Counsel for Appellant.

Supreme Court of the U. S.,

ON APPEAL FROM THE SECOND CIRCUIT.

JAMES BOYCE,
Libellant and Appellee.

vs.

THE STEAMER PATAPSCO, her tackle, &c., JAMES A. BORLAND,
Claimant and Appellant.

Points of Counsel for JAMES BOYCE, *the Appellee.*

STATEMENT OF THE CASE.

This case comes up on appeal from a decree of Mr. Justice Nelson, delivered in the Second Circuit, reversing a judgment rendered in the U. S. District Court for the Southern District of New York.

In the District Court below, the libellant, a resident of Baltimore, had filed his libel and arrested the Patapsco, a vessel owned or chartered by the Commercial St. Bt. Co., a corporation incorporated by the laws of the State of Rhode Island, (fols. 49, 65) for coal furnished the said steamboat at Baltimore, in February and March, 1866, to enable her to make her trips between Baltimore and New York (fol. 48), between which ports she was running, under a charter to (124) and in the line of the said Company (fol. 47–48). At that time the title to the vessel was registered in the N. Y. Custom House (126) in the individual name of Bacon, who was President of the Company, and a resident of New York (121–125), and so remained until April

2, 1866, (but she was controlled solely by the Company,) on or about which date a bill of sale of her was executed by Bacon to the present claimant, Borland, also a resident of New York (125); the bill of sale expressing a consideration of $15,000 (125), but as appears by a letter dated April 27, 1866, written by Borland to the libellant, the actual consideration must have been a claim which Borland held on the vessel amounting to $10,500 (fol. 87), and in practical effect he only held the title as security.

Judge Shipman, of Connecticut, who was holding the District Court in New York city, decreed in favor of the claimant, and dismissed the libel (fol. 14). On appeal, the Hon. Samuel Nelson reversed the dismissal, and decreed in favor of the libellant, with a reference to compute (see decree, p. 75).

On the reference, the Commissioner reported in favor of the libellant for $1,982 $\frac{07}{100}$ (p 73). Exceptions taken (p. 74) to this report were overruled. The report was confirmed, and a final decree entered in favor of the libellant for $1,982 $\frac{07}{100}$, with interest from July 15, 1868 (see decree, p. 75). From such decree the claimant of the Patapsco appealed to this Court (p. 76). The opinion of Mr. Justice Nelson is hereto annexed.

The case of the Patapsco was argued and decided by the same Judge at the same time with the "Neversink" (5th Blatchford, C. C. R., p. 539); a decision favorably referred to by his Honor, the Chief Justice delivering the opinion of this Court in "The Grapeshot," (9 Wallace, p. 137).

POINTS.

Firstly, of Fact.

I. The proofs in the District Court below established that the libellant, James Boyce (the present appellee), was, at the time of the furnishing of the supplies in question, a resident

of Baltimore, in the State of Maryland (fol. 25); that he was a dealer in coal, and accustomed to furnish steam vessels with coal to make their trips (25, 166).

II. They also established that, at the time of the furnishing of the supplies in question, the Patapsco was a steamer running in the line of and chartered to the Commercial Steamboat Company (48), which was a corporation incorporated by and under the Laws of the State of Rhode Island (49, 65), and foreign to the State of Maryland.

That during all that time the title to the Patapsco stood in the name of one Bacon, who was the President of said Company, and a resident of the State of New York, (124, 125.)

Such title so remained until April 2, 1866, when a bill of sale was made to the present claimant, also a resident of New York (p. 49), in form absolute, but as appears by his letters of April 27, 1866, the title to the vessel was actually held by him as security for $10,500 (87). At no time, therefore, during the furnishing of the supplies, had the Patapsco ceased to be a foreign vessel.

III. The proofs in the District Court below, also established that the supplies in question consisted of six separate deliveries of bituminous coal by the appellant, on board of the Patapsco, on the following dates, (fol. 28,29, also orders on pp. 13 and 14.) viz :

1866.	Feb.	3—40	tons	7 10	284 00
"	"	10—41	"	7 10	291 10
"	"	17—50	"	7 10	355 00
"	"	26—50	"	7 00	350 00
"	Mch.	14—25	"	6 50	162 50
"	"	24—42	"	6 50	213 00
					1,715 60

(See Exhibit H, p. 14.)

The rest of the amount reported was composed of interest.

It also established that the said supplies were used in the service of the vessel *to enable her to make her trips in the line* (fol. 48) *and were therefore necessaries.* The proofs on the reference in the Circuit, showed that on each of those occasions the Patapsco made trips to New York and used the coal for that purpose, (fol. 195-160.) That at the time the said coal was furnished, the owners of said vessel, The Commercial Steamboat Company, *had no other coal at Baltimore*, (the port of supply,) *by which the vessel in question, the Patapsco, could have been supplied for her said trips independent of the coal purchased by Mr. Boyce.* (See Mr. Blaisdell's testimony, fol. 49, p. 16,) and during *February and March*, 1866. *The owners purchased coal of no other person for the said vessel than of Mr. Boyce*, (fol. 57).

IV. The proofs in the District Court below, also established that the supplies in question were ordered by the owners of the line through their Baltimore agent, who had authority for that purpose, on the credit of the Patapsco (the Kalorama, 10 Wallace, 204); and that they were so sold and delivered by the libellant. (See Exhibit H on p. 14). The proofs on the Reference also prove the same facts, (evidence of Boyce, 184, 185).

The course of dealing was as follows, viz.: the engineers of the different steamships of the Company, on their arrival at Baltimore, reported to Mr. Blaisdell, the agent of the Company, what coal or supplies they needed for the particular vessel, whereupon Mr. Blaisdell filled up a printed circular directed to Mr. Boyce (or his deputy, Conyers, did so in his, Blaisdell's

name), stating to him to furnish steamship Patapsco, or whichever one it might be, so many tons of soft coal at the time when same was needed, *and send invoice therefor*, (fol. 28). Mr. Boyce then filled up a printed order, in substance directing his agent, Mr. Coyne, to deliver on board steamship Patapsco so many tons of bituminous coal (28). On receipt of that order the coal was so delivered on board of the steamship by Mr. Coyne, and vouchers for such delivery taken (61). At the end of the month a bill was made out of all the deliveries for that month to the Commercial Steamboat Co., in which the coal delivered during the month *is charged to each steamboat*, and the bills of coal collected (see bills on p. 21). *The object of making out a general bill in that form each month was, as testified to by Mr. McGowan (Mr. Boyce's man of business), to save useless accumulation of bills, and for sake of convenience* (37).

But, as appears by Mr. Blaidsell's and Mr. McGowan's testimony, and also *by Mr. Blaisdell's correspondence* (fol. 59), which the claimant has introduced in his testimony, and *made evidence against himself*, the coal was in effect *sold to the credit of and charged to each steamship* (59), was sold at the lowest cash price, and the only credit given was the waiver of the cash on delivery, which was done to save many petty accounts.

The libellant further proved the value of the coal delivered, also that it was ordered by the agent of the Company *for the Patapsco* (28); that it was *put on board* of the Patapsco (61); *used by it* in her trips (48). The libellant further proved at the time the coal was sold and delivered by Boyce to the steamship, the Company *was not in good credit in Baltimore* (30), and that *Mr. Boyce knew it.* Mr. McGowan further testifies that the reason Mr.

Boyce kept selling to the Company, although they were not in good credit, was because *he, Boyce, had his claim against the steamers for his coal delivered to them* (38). (The Grapeshot, 9 Wallace, 129 Opn.; the Guy, 9 Wallace, 758; the Lulu, 10 Wallace, 192.)

V. The libellant in the District Court below also anticipated the claimant's defence, and proved facts which authorized the Court below to decide that the Commercial Steamboat Co., at that time, *had no means in Baltimore to pay for coal for their steamships, and that there was a necessity of resorting to the rem to get credit to deliver these coals, thus—*

1. Mr. McGowan proves that the Commercial St. Bt. Co. were not in good credit in Baltimore in February and March, 1866 (30).

2. Mr. Pendergast proves that in February, 1866, he was engaged in negotiating to unite himself with that Company with his two steamships, in order to found a coastwise steamship company, which negotiation led him to make "*close enquiries as to their character and solvency*" (70). Those enquiries were not satisfactory, and led him to believe they were insolvent, and he broke off the negotiations. One of his reasons was that their vessels were mortgaged to the Baltimore & Ohio R. R. Co., and an application was made to him by one of the officers of the Company to loan them money on their stock, which he declined, because the President of the Company was then under protest, in Wall street, for his own as well as the Company's liabilities (70).

He further testifies that *he imparted that information to Mr. Boyce in February and March*, 1866 (70).

3. The libellant further proves by John King,

Jr., and by his cross-examination of BACON, a witness introduced by the claimants, that prior to February, 1866, the Commercial St. Bt. Co. had an arrangement with the Baltimore & Ohio R. R. Co., whereby the former Company collected the freights of the latter Company, and were unable to return them, and although ten days' time was given them to return, they were unable to do it in January, 1866 (fol. 123), and were compelled to give a mortgage on their steamships to the Baltimore & Ohio R. R. Co., on the 6th day of February, 1866, to secure $45,000—the amount of those freights. (P. 23, fol. 23). These transactions took place in Baltimore, *thus diminishing their credit in that port. All of our coal was sold after that date.*

4. The libellant further proved, that on the 10th April, 1866, the property of the Company, including its steamships, (*but not including the Patapsco*, fol. 80 to 86,) were attached on claims amounting to $131,000 and upwards (fol. 86,) in existence in and prior to February, 1866, many of which attachments were for mechanics' liens in rem., and they were finally sold on the 30th June, 1866, and brought not enough to pay those attachments, nor the one-half thereof; and since January, 1866, not a dollar of principal or dividend has ever been paid on the capital stock of the Company; (fol. 124,) but the whole affair was a grand smash, in which all suffered excepting the favored few, who were first in at the death. On examining many of these debts, it will be found that they were nearly all created before February 1st, 1866, and were for moneys loaned to the Company, either to buy coal for their steamships or for other purposes.

5. The libellant further proved, by the cross-examination of SMULL, the Company's agent, that even he (who always took the opportunity of paying himself out of the Company's funds in his hands) had not been able to secure the

times before its failure, was good, *was speaking throughout of its condition in New York, which was not the port of necessity.* On cross-examination he shows he had not been in Baltimore since January 1, 1866 (123) and knew nothing, therefore, of the state of the Company's credit in Baltimore since that time (123), and further proved, on cross-examination, that the Company was in want of money in February, 1866, also in January, 1866 (122); and he requested divers parties to procure loans of money for the Company on their stock. (122.)

5th. The witness Nichols, in fact, knows nothing about Baltimore. His transactions in New York with the Company must have been on a very limited scale, as he fortunately escaped when the Company failed with their owing him nothing (121).

6th. As to Smull, his testimony is not of much account either way, as he attempted to throw obloquy on the character of a responsible merchant, Pendergast (106); and his counsel had to confess that his imputations were unfounded, failing even to find a second witness to bolster up his unfounded attack on Mr. Pendergast's character (124). On cross examination, it appeared that most of his memory arose from an examination of Mr. Pendergast's testimony. Laying that aside, he would not have recollected the matters at all inquired about (116, 117).

The testimony taken of Mr. Conyers, their cashier, does not, after all, help the claimants.

Mr. Conyers speaks exactly like an employee who sits in the office checking and paying off bills (132), the moneys therefor being furnished to him by the active financial man of the Company. Of the *troubles and trials* the Company were under for money, or *their shifts to procure money*, he knows nothing. He had nothing to do whatever with the out-door business; nor did he negotiate any purchases; nor did he

know personally whether the steamers needed supplies or not.

His office was peculiarly clerical (133); whilst he indulged in the general language that the Company was in good credit, he could not tell how much money it had on hand, either in February or March, 1866 (133); nor state particulars to support his position. But these facts he proved:—

1st. All their purchases for supplies were made for *cash, payable at the commencement of each month* (134). This was the invariable custom at Baltimore; but he could not tell why Boyce's coal, furnished in February, 1866, was left unpaid in March, 1866 (136). (*The only inference would be that they had not the money on hand to pay for them, or for the coal which was purchased in March.*) $444.44 was the amount of what was purchased in March, 1866, of Mr. Boyce.

This witness spoke entirely from memory, and finally admitted that he could not give definitely any particulars on hand from memory (137).

We insist that the onus is on the claimants, to show that in February and March 1866, *they were under no apparent necessity for these supplies, i. e., after the positive testimony given in by the libellants.* (The Lula, 10 Wallace; the Kalorama, *ibid*, 204.)

We submit that on the facts that the libellant proved, that in the port of necessity, the Commercial St. Bt. Co., as charterers of this vessel, or owners, in February and March, 1866, *had no coal for that steamship*, and were either in a state of *qualified insolvency*, which afterwards became absolute, or *were in a state of necessity*, in Baltimore for money to carry on their business as a line—a necessity which compelled them to use the freight moneys belonging to a connecting line, to secure which, they were com-

pelled to pledge their ships. All their steamers were pledged to creditors, viz: three of them to the Baltimore & Ohio R. R. Co., and the Patapsco to Borland for $10,500.

Secondly, of Law.

I. The libellant having proven a sale and delivery of necessaries (viz: coal) on board of a steamship, used by it in its navigation in a foreign port, ordered by the owners' agent, the presumption of law would be that the goods *were purchased on the credit of the steamship itself*, and the claimants must displace that presumption.

See Judge Taney's Remark's in Thomas *vs.* Osborne, 19th How., citing the Gen. Smith.
4 Wheat., 443, Freeman *vs.* Buckingham.
18th How., U. S. Sup. Ct. R., p. 182.
The Santiago de Cuba, 9th Wheat., p. 417.

II. Where the owners of a steamboat need coal for their steamboats, and *have no coal on hand for their boats*, but actually buy same at the lowest cash price in a foreign port, the presumption of law would be that they had *no credit* to buy it on their own responsibility *otherwise than for cash*. If the material man waives the preliminary, cash on delivery, the presumption of law is that he does not do it on the exclusive credit of the buyer, but rather on the credit of the ship to which it was delivered in a foreign port. Judge Sprague, in the Sea Lark, Sprague's Decisions, p. 573, says: In order to charge the ship for supplies, it is not necessary that *it should in terms be liable for the payment.* There is nothing in the recent case of Pratt *vs.* Reed to disturb the old doctrine—"tacit lien arises when the circumstances necessary to create it exist."

III. The very late cases of the Lulu, 10 Wallace, 192; the Kalorama, 10 Wallace, 204; the Custer, 10 Wallace, 215; the Grapeshot, 9 Wallace, 129; the Guy, 9 Wallace, p. 758, are quite conclusive in favor of the right of the material man in this case.

IV. Baltimore being the port of supply is the port of necessity, and in case the Company's credit becomes a material element in the lien, its credit in that port must be the standard.

V. The claimant here has, by his letter of April 27, 1866, *expressly admitted the claim, or lien of the libellant* on this vessel, and has insisted only on *his priority of lien.* He is the only party who contests, and his letter shows that his title is merely that of a defeasible holder as security for $10,500, *as he says to the libellant if you give me this* $10,500, *the amount of my lien, I will give you a bill of sale for the steamer.*

VI. No defence of laches can be set up against the libellant, because

1. The last delivery of coal was on the 24th March, 1866. The attachments were levied on the property of the Company in New York, on April 10, 1866. The libellant came on here from Baltimore, and the libel was filed on the 20th day of April, 1866, almost immediately after the vessel stopped running. The bill of sale to Borland was dated April 2d, 1866, but was not recorded until April 4, 1866 (fol 130).
2. The letter of April 27, 1866, shows that Borland held the title as security for a claim of $10,500 (fol. 87).

3. Mr. Borland did not in any way on the trial in the District, or in the Circuit, testify, or pretend that he lost any right by the libellants not filing his libel until April 20, 1866. On the contrary, in his letter of April 27, 1866, he admits he knew of the libellants' claim before that—does not dispute its validity, and offers to give them a bill of sale, if they give him the $10,500.

VII. The claimants relied in the Court below, and it is presumed they will in this Court rely, on the entry in the libellant's ledger—see fol. 64 to 66, and the journal entries on p. 21—as *conclusive evidence* that the credit for the supplies in question were given to the Commercial Steamboat Company. The original entries in the day-book were not called for by the claimants (fol. 52); but, from the journal entries, it is apparent that the *day-book entries which are thus journalized were debited to each steamer by name.* Blaisdell's letter (fol. 59), and his testimony (48), shows that the coal in question was bought for and charged to the steamer Patapsco. He also identifies Exhibit H (which is on p. 14, and which is an account with the Patapsco) as a correct account of the coal delivered to the Patapsco.

McGowan's testimony, fols. 27, 28, 39, 40; Coyne's testimony, fol. 61, show that the coal was *ordered in the name of* and on the credit of the Patapsco.

Entries in books are always explainable. The truth of the transaction can be shown, independent of the entry. In face of the orders of the goods for the Patapsco by name, and in face of the deliveries on that steamer itself, and of the

rendition of bills aggregating the different deliveries to the several steamers by name, and of the evidence proving a delivery on the faith of the implied hypothecation of the Patapsco, the mere entries in the journal and ledger, which are not the originals, ought not to weigh much on the subject of a personal credit. Even the taking of the Company's note would not create a presumption that the credit was personal, and would not displace a *bona fide* lien if the note were surrendered at the trial.

The Guy, 9 Wallace, 758.
The Kalorama, 10 Wallace, 204.

Nor ought such charges in the books possess as much weight on the subject of a personal credit, as the fact that the material man had commenced a common law action for the claim. Yet, in the Kalorama, 10 Wallace, 204, such suit in *personam* in a State Court was held not to be conclusive against a lien in *rem*.

It does not appear that the present claimant was affected by any alleged laches on the part of the libellant in not asserting his lien before April 20, 1866, the date of filing the libel (fol. 6). The supplies were commenced to be furnished on February 3, 1866, and ended on March 24, 1866.

(*a*.) In his letter of April 27, 1866, the claimant does not assert any laches, but shows that he holds the vessel merely as security for a precedent debt.

(*b*.) In the Lulu, 10 Wallace, p. 199, it appears that those material men's claims which were sustained, were for supplies furnished during eleven months continuous trips between Baltimore and Charleston.

Where the libellant shows, as in this case, that every preliminary entry is in favor of a charge direct to the steamship, viz. :

1. Order of the company's agent to deliver direct to the steamship by name ;

2. The *order* of the libellant to his coal man to deliver direct to the steamship by name ;

3. The actual delivery on board of the steamship by name in a foreign port ;

We submit that the inference is irresistible *that the credit is given direct to the vessel itself.* And when it is further proven that the reason why monthly accounts were made out to the Commercial Steamboat Co., in bulk, was in order for convenience sake, and to save an useless accumulation of bills, or many petty accounts, such last entries are thereby fully explained, and the legal inference of credit to the ship is not removed.

N. B.—These book entries to the Commercial Steamboat Co., Claimant's Ex. No. 1, do not include the coal sold the *Patapsco in March*, 1866, *which is about* $444.44, *and for that amount alone must the decree below of the Circuit be affirmed, if for no other.*

VIII. To displace the lien, the onus is thrown on the claimant to establish that the sale and delivery of the coal in question was on the *exclusive credit of the Commercial Steamboat Co.* (The Lulu, 10 Wallace, 192.)

This the facts rebut.

1. For the reasons and proofs before summarized.

2. The proof shows a sale for cash at the lowest market price.

This fact proves that the libellant gave no exclusive credit to the Company, but when he waived his privilege of cash on delivery, and put the coal on board the steamship, the presumption of law would be that he thereby gave credit to the steamship, and not to the owners thereof, inasmuch as the supplies were furnished in a foreign port.

IX. By the Act of 1851, the charterers having sole control of a ship engaged in ocean navigation, are to be considered as owners. (See Statutes at Large, vol. 9, p. 636. See 5.)

The City of New York, 3 Blatchf., C. C. R. p. 187, gives the charterer the right to charge the *rem*. Blaisdell, in his testimony, says that so far as Boyce was concerned, the Patapsco was treated as the property of the Company, and Boyce did not know it was chartered.

LASTLY.—We claim that the decree of the Circuit below should be affirmed on the merits, with costs

D. MCMAHON.

Advocate for the appellee, JAMES BOYCE.

[*Opinion of* NELSON, *Justice, delivered in the Circuit below.*]

JAMES BOYCE,
v.
THE STEAMSHIP PATAPSCO.
Opinion of NELSON, *C.J.*

The bill in this case was filed to recover for supplies of coal furnished in the months of February and March, 1866, at Baltimore, to the steamship Patapsco. The only question in the case is, whether or not the coal was furnished on the credit of the vessel, or of the owners, The Commercial Steamboat Com-

pany, which run a line of steamers from the city of New York to Baltimore, and occasionally from thence to Charleston. The arrangement was, that the coal should be furnished on the requisition of the engineers of the vessel for cash, but for convenience in making out the bills and transacting the business, they were made out against the vessel once a month and presented for payment. The weight of the evidence is, that Boyce in this arrangement, and time taken to make out and present the bills, looked to the vessel as security in the meantime for the payment of them, and did not intend thereby to rely on the credit of the Company. This Company was a corporation under the laws of the State of Rhode Island, and, of course, not accessible to him, a resident doing business in Baltimore.

The Company had not long been engaged in running this line of steamers, and had no established credit in that city, and in the months of February and March, when the present supplies were furnished, its credit was not good. Previous to this time it had become heavily indebted to the Baltimore and Ohio Railroad Company.

I think the coal in this case, under the circumstances, was delivered and the credit given to the vessel during the interval taken by the common consent and usage of the parties within which to make up the monthly bills, and present them for payment, and that the indebtedness is properly enforceable as a lien upon the vessel against which it was charged.

Decree below reversed, and decree for libellant, with reference.

Messrs. D. & T. McMahon, for libellant.
Mr. Donohue and Mr. Heath, for claimant.

Points of the appellee on the Appeal, with respect to the exceptions to the Commissioner's report, to be used in case, in this Court, the appellant seeks to disturb those findings.

STATEMENT.

On the hearing before the Commissioner, the libellant read from the Apostles the original testimony (folios 25, 28, 39, 45, 47, 61,) of McGowan, Blaisdell and Coyne, which proved that on the following days orders were given for coal for the Patapsco, and that then Boyce delivered on board the Patapsco. at that time in Baltimore, the following amounts of coal, which were used in her trips, viz. :

Ex. B.,	fol. 39,	February	2d,	1866,	40 tons.
Ex. C.,	fol. 39–40,	"	9th,	"	41 "
Ex. D.,	fol. 39,	"	16th,	"	50 "
Ex. E.,	fol. 43–44,	"	26th,	"	50 "
Ex. N.,	fol. 39–40,	March	13th,	"	25 "
Ex. G.,	fol. 43–44,	"	22d,	"	42 "
			Total,	.	248 tons,

—which, at the prices stated in the libel, made out the claim of the libellant $1,715\frac{60}{100}$. See bill, Exhibit H, fol. 41. The same, at the time of the filing of the libel, with interest, was $1,724\frac{50}{100}$. (See libel, fol. 5.) And at the time of the report was, with interest, $1,982\frac{07}{100}$, (fol. 114).

The course of dealing is shown by the original testimony contained in the Apostles to be this, viz. :

Blaisdell, the Agent of the Company, from time to time received notice from the master of the Patapsco and other vessels of the Company that they needed coal. He then made a requisition on the libellant by a printed form (see Ex. " A," fol. 48,) to furnish the Patapsco, or whatever steamer it

might be, so many tons of coal. Then McGowan shows that on receipt of orders from Blaisdell, or other competent authority from the Commercial Steamboat Company, in February and March, 1866, he, as clerk of the libellant, gave divers orders from time to time, (fol. 28) to John Coyne, the libellants, agent at Locust Point, near Baltimore, to deliver on the Patapsco and other steamers coal to the amount, from time to time, as required by Blaisdell, (fols. 28, 29).

The original orders from McGowan to Coyne are produced and tally with the bill of particulars annexed to the libel, and are marked Ex. B, C, D, E, F, G. fols 28, 39, 42.

Coyne on the original testimony (fol. 61) testifies to having delivered the coal on the Patapsco, pursuant to those orders (fol. 62). Then Samuel Blaisdell, Jr., the agent of the Company, testified, as see his testimony contained in the Apostles, that the libellant's account was in all respects correct (fols. 48, 49). By that account, it appeared that the amount of the claim was due, viz.: $1,715 $\frac{60}{100}$ (fol. 41).

So that on the original testimony taken from the Apostles, the libellant's claim was fully made out at $1,715 $\frac{60}{100}$, exclusive of interest.

On the hearing before the Commissioner, the claimants examined orally Mr. Blaisdell, who testified that according to his order book, the entries in which were not made by himself, only the following orders were given by him for coal for the Patapsco, viz. (fol. 157):

February	2,	1866,	40 tons.
"	17,	"	50 "
"	26,	"	50 "
March	23,	"	50 "
			190 tons.

Making a difference of 58 tons between libellant's evidence and the claimants.

It will be seen that the difference between the libellant's account and the order book entries of Blaisdell, was as follows, viz. (fol. 41):

In the order book was left out the order of January, 10, 1866, ...	40 tons (Ex. C).
On account of which, 41 tons were delivered; and the order of March 13, 1866,	25 " (Ex. F).

On 23d March, 1866, Blaisdell says (fol. 157) he ordered fifty tons, but our account (Ex. H) only shows forty-two tons delivered on that day. (See as corrected in fol 29.)

This makes an actual difference of fifty-eight tons, thus the two orders left out of the order book makes up as filled, sixty-six tons; but on the order of March 22, 1866 (Ex. G), of fifty tons, only forty-two tons were delivered—eight tons less than the order, which reduced from sixty-six tons, makes fifty-eight tons.

But Mr. Blaisdell, at the reference, on cross-examination shows that on the 10th day of February, 1866 (fol. 158), and on the 15th day of March, 1866, the dates of the two disputed orders (fol. 158), the Patapsco was evidently at Baltimore, *because on those dates she got on each occasion wood enough for a trip* (fol. 158).

When Mr. Blaisdell was examined before in this case, on a commission issued out of the District Court, he testified that the whole of the libellant's account was correct (fols. 48, 49). He then had his books before him, and the matter was fresher in his memory than at the time of the reference.

To support Blaisdell's testimony on the reference, the claimant examined McNeff (fol. 160), the master, whose testimony was not of much importance; but Richard Fleming, the engineer, testified (fol. 197) that he was the engineer of the Patapsco, which vessel made six voyages in January, February and March, 1866, or two every month (fol. 197). That

she used forty-five tons of coal each trip, which was a round trip (fol. 197). That she got the soft coal of the libellant (fol. 197); but on one occasion she got forty tons of hard coal in New York (fol. 197).

The engineer's testimony was of but little consequence for these reasons; he is willing to testify that the Patapsco made only two trips a month during January, February and March, 1866; or, six trips in all. (Fol. 197.) Yet, if his testimony is true, we have the fact that Mr. Blaisdell, the agent, who produces his order book, shows from that order book that the vessel must have made eight trips in all, viz.:

4 in January,
3 " February, and } Fol. 157.
1 " March.

viz.: as per order book.

January	5th, '66,	50 tons.	
"	16, "	40 "	
"	18, "	10 "	
"	26, "	40 "	Fol. 157.
February	2, "	40 "	
"	17, "	50 "	
"	26, "	50 "	
March	23, "	50 "	
	Total,	330 tons.	

(Coyne shows, that the run of the trips were from six to eight days each. Fol. 167.)

Superadd to this the fact that Mr. Blaisdell proves that on the 10th February, 1866, he ordered wood enough of P. Rooney for the Patapsco for a trip; (fol. 158), showing that she was wooding up in Baltimore on that day, (the day we show by Coyne, a quantity of coal ordered for the King Fisher), forty-one tons was, by order, transferred to the Patapsco; (fols. 164–165.) (See account on page 70,) and that she was in Baltimore on March 14th or 15th, 1866, (fol. 158,) and got wooded up again for another trip, (fol. 165,) i. e., the day we let her have twenty-five tons of coal, enough to take her to New York where she was

seized; we have, therefore, apart from our positive, written memorials and orders, positive evidence that the enginer is mistaken.

If the engineer is not mistaken, how could Blaisdell give these orders, and how could Coyne produce the original orders given to him by Boyce, and testify, as he did, that the coal was delivered as called for by the orders.

Another fact militates against the engineer's testimony, viz.: He says he kept an account of his voyages, (fol. 197), yet can't tell where it is (fol. 197.) He kept a log-book, (fol. 198) yet it is not produced (fol. 198.) He testified wholly from memory If his memory is true, Mr. Blaisdell's written orders are untrue. He says he never took on board the Patapsco so small a quantity as twenty-five tons of coal, yet we find Mr. Blaisdell on the 18th of January, ordering ten tons for the Patapsco. (Fol. 157.)

Yet he admits that he cannot give dates of the different voyages, nor amounts of the different coal taken on board, excepting that they were every other trip either fifty or forty tons each time—in which he is as unreliable as in the other matters; as there were only two occasions in our account, (Ex. H., fol. 41) when fifty tons on each time were taken on board.

The certificate of the Deputy Collector of Baltimore, (fol. 195) shewed conclusively the number of trips the Patapsco cleared from Baltimore in January, February and March, 1866—viz.: to be nine in number, and those in February and March, 1836, corresponded exactly with Ex H. (fol. 41.)

The following written memorandum, therefore, overcame the engineers testimony, viz.:

1. The written orders of Blaisdell, (see fols. 28, 39, 40, 42, 43, 44.)

2. The entry in his order book of the orders for wood on February 10th, and March 15th, thus showing vessel in port, (fol. 158.)

3. The entries in Boyce's Books of that date.

4. The written orders given by Boyce to Coyne,

(tallying exactly with our bill which he says he filled). Exhibit B, C, D, E, F, G, (fols. 39 to 44.)

5. The two weekly reports made by Coyne to Boyce of dates 10th February and 15th March, 1866, explaining the alleged discrepancy between Boyce's bill and Blaisdell's orders, (see annexed to testimony fols. 189, 190.)

6. The certificate of the Deputy Collector of the Port of Baltimore, (fol. 195.)

Therefore, in the face of these written memorandum, made contemporaneously with the alleged deliveries, it was impossible for the Commissioner to give greater weight to the unsupported testimony of the engineer, however positive, who relied solely on his memory of events which took place more than two years prior to his examination.

The engineer made some observations with regard to the said vessel having been coaled up from a miscellaneous heap on a dock (fol. 198.) In this he differs from the Captain, who testifies that they were coaled from a scow brought there for that purpose, undoubtedly the libellant's scow, (fol. 160.) Coyne testifies he delivered the particular quantities on the Patapsco, (fol. 61.) There is no insuperable difficulty in keeping a tally from the buckets of coal which were put in the vessel (fol. 160,) and so ascertaining the quantity delivered each time, such a tally is made every day in unloading coal scows upon docks or in loading steamers from docks.

It appearing then from a comparison of the testimony of the libellant as contained in the Apostles, and that taken on this reference that the actual difference between the orders as given to Coyne and those mentioned in the order book of Blaisdell was:

February, 10, 1866, 40 tons, filled by delivering 41 tons.

March, 10, 1866, 25 tons, filled by delivering 25 tons.

See Exhibit H. (fol. 41.) McGowan's testimony (fol. 29.)

The Libellant's introduced on the reference the testimony of Coyne, who shows that the forty tons was actually forty-one tons, which were delivered on February 10th, 1866 (fols. 164, 165, 168). They were originally ordered for the King Fisher, but the order was countermanded, or rather changed, to deliver same amount on Patapsco, and on 10th March, 1866, the twenty-five tons were also delivered to the Patapsco (fol. 165).

To fortify his testimony he produced the original weekly report he made to his principal, Mr. Boyce, (see p. 70).

The evidence produced by the libellant, on the original hearing and on the reference, was so positive as to the correctness of their account, viz: 248 tons, and the price, $1,715.60, that it could not be gainsaid by the very slight testimony produced by the claimants on the reference, and the Commissioner properly reported therefor in his favor.

But another question was raised, viz: on the evidence of Blaisdell, taken on the reference, to wit: That on 15th February, 1866, he paid on the Patapsco account, $1,036\frac{60}{100}$, and so charged it in his books, (fol. 157.) He says, at the same time, *he did not pay for coal in advance* (fol. 159), when examined in Baltimore by the libellant, in rebuttal of what he testified to on this reference, he shows that the said $1,036.60 so paid on 15th Febuary, 1866, was actually paid for the coal delivered in January, 1866, to the Patapsco, and was part of a *larger sum paid in settlement of the January Blls of Boyce against various steamboats*, thus :

Bills of January, 1866.

Steamboat	Gull,	coal acc't	$1,806.11	fol. 175.
"	Falcon,	"	1,587.25	
"	Patapsco,	"	1,036.60	
"	Kingfisher,	"	1,349.00	
Lighter	Eagle,	"	71.00	
			$5,849.96	

which sums were paid thus, viz:

Feb'y 5,	cash,	$3,000.00	fol. 176.
" 9,	"	1,000.00	
" 15,	"	1,849.96	" 170.
		$5,849.96	

From his check book it is apparent that he did not pay the specific sum of $1,036\frac{60}{100}$, but the said sum was one of a group of bills against the various steamers of the Company, which were liquidated by the different payments constituting or making up the $5,849.96. And on 15th February, 1866, he rendered to his principals, in new York, the account of each vessel's bills, among which was the Patapsco's account, $1,036.60. The amount chargable to her for the coal purchased of Mr. Boyce in January, 1866, (fol. 175) which coal is not embraced in this suit.

Mr. Boyce and his deputy, Mr. Crook, both testify to those payments, constituting the $5,849.96, being in full of the January bills (fols 169, 170).

The counsel for the claimants on the reference also claimed that the Patapsco earned money in February, 1866, and that her earnings for February should be applied in payment of her February bills, (Blaisdell, in his testimony, shows that all of these earnings were anticipated by New York drafts on him, which made him short), (fol. 179). But the rule of law is well settled, that a debtor, owing several debts to the same creditor, has the right to apply his payment at the time of making it to which debt he pleases. (Per Story, J., in Cremer *vs.* Higginson; 1 Mason's Reps., 338. U. S. *vs.* Wardwell; 5 Mason's R., 35. Seymour *vs.* Van Shuyck; 8 Wend, 403). So if Blaisdell, at the time of paying the $1,036.60, with or included in the other sums, specifically applied it in settling the January bills of the Patapsco and other boats, that is an end of that point, and such is by evidence (fol. 175).

But, suppose the Court should consider that the

Commissioner erred, and should hold that the evidence does not go to that extent, viz., that the debtor did not so specifically apply. The result, then, is that the other rule of law applies, viz.:

That if the debtor makes a general payment, without appropriating it, the creditor may apply it as he pleases (2 Greenleaf's Evidence, sec. 529; Edn. of 1846).

It is quite evident from Mr. Boyce's books, that he applied in payment of the January account of the Patapsco and the other boats, the sums received, thus:

February 5th,	cash, . . .	$3,000.00
" 9th,	" . . .	$1,000.00
" 15th,	" . . .	$1,849.96

thus exactly balancing and extinguishing the January bills (fols. 169, 170).

But, suppose Mr. Boyce did not so apply it, then a third rule of law applies, viz., that failing a specific application by the debtor or creditor, the law will apply it according to its own view of the intrinsic equity and justice of the case. (See authorities above quoted.)

But in applying these rules, it is settled that a general payment cannot be appropriated to a debt created *after the payment* was made, *i. e.*, in advance. (A greater part of the account now in suit, was for coal delivered on the Patapsco after February 15, 1866.) (Mayor *vs.* Patton, 4 Cranch, 317. Baker *vs.* Stackpoole, 9 Conk., 420, 436.)

In construing the third rule, viz.: The application of payments, where neither the debtor or creditor applies the same, the Courts hold the intrinsic justice and equity of the case to be this, viz.:

Where there are divers claims, some of which are but imperfectly and partially secured, the Court will apply it to those debts for which the security is most precarious. (Field *vs.* Holland, 6 Cranch, § 27, 28.)

The mere fact that one of several debts is secured by a surety, does not, of itself, entitle that debt to

a preference in the appropriation of payments. (2 Greenleaf, § 534, p. 439.)

So, where there are items of debt and credit in a running account, in the absence of any specific appropriation, the credits will be applied to the discharge of the items of debt *antecedently due*, in the order of the account. (Postmaster G. *vs.* Turber, 4 Mason, 333. Gass *vs.* Stimson, 3 Sumn. R., 99, 112. U. S. *vs.* Wardwell, 5 Mason R., 82, 87. 2 Greenleaf, Ev., § 533, p 439.)

Ii is quite evident, therefore, that the $1,036.60 cannot be applied on the February bills, but must be on the January bills (fol. 175).

The claimant then urged, that inasmuch as by the account appearing in the apostles, that certain credits were given by the libellant to the Commercial Steamboat Company, of dates subsequent to the delivery of the coals in suit, that they should have the benefit of them.

This account current was made up in the libellant's ledger, probably by his bookkeeper, without consultation with him, after the suit was commenced in the Court below, and are not properly evidence againt the libellant's claim; but when examined, it will be found that as to the other items of credit in the account, it is shown by Mr. Boyce's testimony that the $3,008.41 was received in a compromise of two libels against the Kingfisher and Sea Gull for coal furnished them (see Boyce's testimony in the reference endorsing account), and had nothing whatever to do with this case. (See fols. 186, 194).

As to the $73.50, it is shown to have been a credit of fifty cents per ton made off the bills for coal delivered to other boats, and is fully explained in folios 182, 183.

As to the $136, it is shown it is money paid to libellant on 5th May, 1866, after filing libel for coal delivered for cash to the steamer Eagle in Baltimore, and has nothing to do with this account (fol. 108).

Finally, it is shown that our claim on the 20th

day of April, 1866, when our libel was filed in the District Court, our bill against the Patapsco was honestly and fairly $1,715.60, which, with interest to the time of the report, was $1,982.17.

The Commissioner, therefore, properly found his report in favor of the libellant, and the Circuit Court properly affirmed it. Even if the report was for too much, this Court would not have jurisdiction merely to examine into the report for the purpose of striking off items, and thereby reducing it below $2,000.

DENNIS McMAHON,
Advocate for Appellee.